

# CEDAR RIVER WATERSHED DISTRICT RULES

WORKING DRAFT

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## **RULE 1. INTRODUCTION AND DEFINITIONS**

The Cedar River Watershed District was established under the authority of Minnesota Statutes, Chapter 103D, the Watershed Act, on April 25<sup>th</sup>, 2007. The District's goals and objectives are to protect and improve the quality of surface waters throughout the District and to reduce flooding and flood related problems in the District.

As required by Minnesota Statutes Chapter 103D, the District has adopted a watershed management plan. In its plan, the District established its goals for protecting and improving surface water quality; protecting groundwater quality; maintaining adequate surface and groundwater supplies for all users; protecting and restoring critical areas; promoting wise land use management; expanding knowledge and understanding of the watershed; engaging residents in water resource management; and providing effective and efficient administration of the District. The District's watershed management plan identifies objectives and initiatives necessary to address these issues, including the adoption of rules and a permitting program.

**Subd. 1. Purpose.** The District is required by Minnesota Statutes Chapter 103D to adopt rules. These rules are intended to accomplish the powers of the Managers under the Minnesota Watershed Act, Minnesota Statutes Chapter 103D. These rules shall have the force and effect of law. The District's watershed management plan identifies several areas where District rules are necessary to accomplish the District's purposes. These areas are flood control that includes drainage, erosion and sediment control, storm water management and wetland restorations.

**Subd. 2. General Policies.** It is the District's goal to provide wise management of the District's water resources. It is the mission of the Cedar River Watershed District (CRWD) to apply the statutory authorities in ways that protect and enhance safety commerce and natural resources for today and tomorrow.

The District strives to implement these rules by education first; notification second, and enforcement if necessary.

**Subd. 3. Coordination with Other Units of Government.** It is the intention of the Managers to coordinate the administration of their rules with all interested federal, state, and local governmental units and agencies having jurisdiction in the District. The District's rules are intended to fill gaps in existing federal, state, and local regulations. The District's rules are not intended to duplicate existing regulations.

**Subd. 4. Review of Local Ordinances.** The District requires all local units of government to submit proposed ordinances relating to drainage, flood plains, shoreland or any other water/land use topic to the District for review and comment. The District must receive the proposed ordinance at least 30 days prior to the local government units' first public hearing. If the local government unit adopts the ordinance, the final approved version must be submitted to the District within 30 days of its effective date.

**Subd. 5. Consistency with State and Federal Law.** If any District rule is inconsistent with state or federal law, the provisions of state and federal law shall govern. Nothing in these rules removes the requirements of other permits or authorizations from other local, state or federal agencies.

**Subd. 6. Severability.** If any part of these rules is declared invalid by a court of competent jurisdiction, such declaration shall not affect the validity of these rules as a whole, but only the part declared invalid.

**Subd. 7. Rule Adoption.** The following procedures shall apply to the adoption of new rules and rule amendments:

- a. Any District property owner, Manager, or the District Administrator may propose rules or rule amendments to the Board of Managers.
- b. A copy of the proposed rules or amendments shall be submitted to each Manager.
- c. The Board may direct District staff to conduct stakeholder meetings to solicit input from Persons and Political Subdivisions likely to be affected by the proposed rules or amendments thereto.
- d. In accordance with Minnesota Statutes Chapter 103D, the District shall submit the proposed rules to the Board of Water and Soil Resources and all local government, units of government and all authorities within the watershed for comments 45 days before the Managers vote to accept the proposed rules.
- e. Before adopting any proposed rules or amendments, the Board shall hold a public hearing to take public testimony on the proposed rules or amendments. The time, date, and location of the public hearing shall be determined by the Board and notice shall be given by publication in a legal newspaper of general circulation in each county with territory in the District.
- f. The Managers shall accept or reject the proposed rules or amendments thereto based on a majority vote of the Board.
- g. After the public hearing, after a majority vote of the Board, and upon being signed by the District's President and Secretary, the proposed rules or amendments are deemed adopted. The adopted rules or amendments shall become effective and have the full force and effect of law after publication in a legal newspaper of general circulation in each county having territory in the District.
- h. A copy of adopted rules or amendments shall be forwarded to each of the following: the County Auditor and County Commissioners of each county having territory in the District; every Township Board Clerk, City Clerk, and Regional Development Commission Chair within the District; the Commissioner of the Department of Agriculture; the Commissioner of the Minnesota Department of Natural Resources, the Executive Director of the Board of Water and Soil Resources; the Commissioner of the Minnesota Pollution Control Agency; the Commissioner of the Minnesota Department of Health; Soil and Water Conservation Districts within the watershed; County Extension agents; all Zoning and Planning Boards in the District; and the Administrator of the Minnesota Environmental Quality Board; all public transportation authorities within the District; and other entities that the Board deems appropriate.

**Subd. 8. Due Process of Law.** No Person shall, under these rules, be deprived or divested of any previously established beneficial uses or rights without due process of law.

**Subd. 9. Definitions.** For the purposes of these rules, certain words and terms are herein defined as follows. In the absence of a definition hereinafter, the definitions established for the State of Minnesota by statute or by case law shall apply to these rules unless clearly in conflict, clearly inapplicable.

**SHALL** and **MAY** as used in these rules, are to be construed to indicate a mandatory and a permissive state or condition, respectively.

**Agricultural Land:** any land that is actively cultivated, planted, hayed, grazed, or enrolled in an agricultural conservation program as part of an on going farming operation.

**Applicant:** An individual or entity submitting a permit application under Rule 3.

**BMPs (Best Management Practices):** practices to prevent or reduce the pollution of waterbodies and wetlands, including schedules of activities, prohibitions of practices, and other management practices.

**Board of Managers:** the Cedar River Watershed District Board of Managers.

**Board Meeting:** the District Board of Managers' regularly scheduled or special meeting.

**BWSR:** the Minnesota Board of Soil and Water Resources

**District:** the Cedar River Watershed District.

**District Administrator:** the Cedar River Watershed District Administrator.

**Drainage Way:** any private natural or artificial channel which provides a course for the flow of water, whether that flow is continuous or intermittent.

**Floodplain:** the surficial area inundated by flood water resulting from runoff from the 100-year rainfall event or 100-year snowmelt condition, whichever is most severe for the area in question. (The 100-year event is also described as events that have a 1% chance of occurrence in any year.) Floodplain maps are available for many locations from the FEMA Map Service Center at <http://msc.fema.gov/portal>. Floodplain areas in locations not available from FEMA will be determined by a Professional Hydrologic Engineer Licensed in the State of Minnesota.

**Hydrologic Unit:** A Hydrologic Unit is a watershed area of land and water defined by a boundary such that all surface drainage within the boundary converges to a single point. This point of convergence is usually the exit point, where the collected waters leave that watershed.

**Impervious Surface:** a constructed hard surface that either prevents or significantly retards the entry of water into the soil and causes water to run off the surface in greater quantities and at an increased rate of flow than prior to such construction. Examples include, but are not limited to: rooftops, sidewalks, patios, driveways, parking lots, storage areas, and gravel, concrete, or asphalt roads.

**Improvement:** Constructing, enlarging, extending, straightening or deepening of a Drainage Way.

**Land Disturbing Activity:** any disturbance to the ground surface that may result in soil erosion from water or wind and the movement of sediments into or upon waterbodies within the watershed. Land Disturbing Activity includes but is not limited to the demolition of a structure or surface, soil stripping, clearing, grubbing, grading, excavating, filling and the storage of soil or earth materials. This includes a disturbance to the land that results in a change in the topography, existing soil cover, or vegetation that may result in accelerated storm water runoff which may lead to soil erosion and movement of sediment. The term does not include normal farming practices as part of an ongoing farming operation.

**MNDNR:** the Minnesota Department of Natural Resources

**MPCA:** the Minnesota Pollution Control Agency.

**NPDES:** National Pollutant Discharge Elimination System.

**Outfall:** The final run of piping between the last upstream manhole or catch basin and the outlet end of said piping where storm water enters the Drainage Way.

**Person:** any individual, partnership, company, or corporation, but does not include any Political Subdivision.

**Plan:** Cedar River Watershed District Watershed Management Plan adopted October 21, 2009 and approved by the Minnesota Board of Water and Soil Resources on September 23, 2009, as such Plan may be amended or revised.

**Political Subdivision:** any city, township, county, school district, or Political Subdivision of the State of Minnesota.

**Private Drainage System :** any private open channel, not defined in Minnesota Statutes Chapter 103E used to conduct the flow of water.

**Public Drainage System:** Any publicly administered or maintained open ditch, or Drainage Way subject to Minnesota Statutes Chapter 103E.

**Public Waters:** Those public waters of the state identified as natural and altered natural watercourses under Minnesota Statutes, section 103G.005, subdivision 15, clauses (9) and (10), or 103G.201, as shown on the public water inventory maps.

**Repair:** restoring any Drainage Way, or any part thereof, as nearly as practicable to the same condition as when originally constructed or subsequently improved, including re-sloping of open ditches, leveling of spoil banks and removal of trees or other obstructions.

**Undue Hardship:** means the property in question cannot be put to a reasonable use if used under conditions required by these rules. The Board may grant an exception in the rare circumstances where it is demonstrated that such action will be consistent with the

spirit and intent of these rules. Economic considerations alone shall not constitute Undue Hardship if any reasonable use of the property exists under the terms of the District's rules.

**Waterbody:** any body of water including lakes, rivers, streams, watercourses, wetlands, and water basins. ~~and Drainage Ways~~

**Water Control Structure:** Any structure that controls the flow of water or impedes/confines water to a ~~certain area~~ water body, permanent pool or specific designed elevation for water flow bounce. These areas include, but are not limited to berms, dikes, levees, dams and special outlet structures.

**Watershed:** means the boundaries of Cedar River Watershed District. See map in Appendix A.

**Wetland:** The lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water and where hydric soils and hydrophytic vegetation are present under normal circumstances. This definition includes public waters wetlands as designated by the Minnesota Department of Natural Resources and wetlands under the jurisdiction of the Wetland Conservation Act MN State Statue 8420.0111 subp 72.

## **RULE 2. PUBLIC MEETINGS, HEARINGS, AND RECORDS**

**Subd. 1. Meetings.** All meetings of the District, whether regular or special, shall be open to the public and shall be held at a time, date, and place, as determined from time to time by the Managers. The board may establish a special meeting on their own, however, special meetings may also be requested by Applicants. If the request is granted, the Applicant is responsible for paying all costs associated with the special meeting, including but not limited to per diems, notice costs, and consultant fees.

**Subd. 2. Hearings.** Notice of a public hearing shall be given as required by statute. Testimony given and received at all public hearings may be recorded, and witnesses may be sworn as required by statute or at the discretion of the Board.

**Subd. 3. Records.** The records of the District shall be public records, as required by state statute and shall be available to the public for inspection to the extent required. Request for records will follow the District's policy for records management and will work through the designated records manager for the District. It is the intention of the Board to cooperate with all Persons, governmental subdivisions, and government agencies in the promotion of conservation of the natural resources of the District and to share information with the public for the common good.

**Subd. 4. Appeals/Dispute Resolution.** Any Person aggrieved by the adoption or enforcement of these rules or the denial of a permit by the District may appear in front of the Board of Managers within 30 days of the denial to informally appeal the decision. If the matter is not resolved the applicant may appeal under the Appeal and Dispute Resolution Procedures provided in Minnesota Statutes Section 103D.537 and 103D.539, or successor statutes.

### RULE 3. PERMIT REQUIREMENTS

The Board of Managers finds that a permit program is needed to help ensure wise development and conservation of the District's water resources in accordance with the District's watershed management plan. Any permit required by these rules will be issued in accordance with the procedural process of this Rule. Work that requires a permit from the District may not be undertaken until a permit is issued. Obtaining a District permit does not relieve an Applicant from the responsibility of obtaining and complying with all other required federal, state, and local permits. These rules are not intended to permit Public Drainage Systems.

**Subd. 1. Application.** All applications for a District permit are subject to the following requirements:

- a. Prior to the submission of any application, it is highly recommended that the Applicant meet with District Staff for a scoping meeting. This may be conducted in-Person or over the telephone. The purpose of the meeting is to ensure the Applicant is aware of the scope of the District's rules, the application requirements, and the standards for approval of an application.
- b. All applications for a District permit must be submitted on an application form as approved by the Board of Managers.
- c. ~~All applications must be accompanied by a fee as stated in Minnesota Statute 103D to offset the administrative costs of processing the permit, however as described elsewhere in the rules, other fees may be required.~~ No permit fee shall be charged to the public, federal government, the State, or a Political Subdivision. **Service charges may be assessed to offset administrative or technical assistance. These service charges will set by the Board of Managers and approved as part of a fee schedule.**
- d. Any application that requires review by the Board of Managers under Subd. 3 of this Rule, must be submitted, and deemed complete by the District Administrator, at least 10 business days prior to the next regularly scheduled Board Meeting in order to be on the agenda.
- e. Drawings or plans are required to be submitted with every permit application. The drawings or plans are not required to be prepared by a Licensed Engineer unless required by these Rules or by Minnesota State Statutes Chapter 326. Plans must adequately depict the information required by the CRWD permit application. Plans need not be final. However, approval of a permit based on preliminary plans shall be conditional pending receipt of changes and/or final plans.
- f. An initial site inspection, in-progress site inspections, final site inspection and post-project monitoring inspections may be required as part of the provisions of a District-issued permit. A site inspection fee is charged to the Applicant and shall be equal to the District's costs with a minimum amount set by Minnesota Statute 103D. At the time of receiving an application, a fee schedule will be given to the Applicant. The Board of Managers will adopt policies for calculating inspection costs.

- g. Obtaining a District permit does not relieve the Applicant from the responsibility of obtaining any other necessary permits from other governmental units or agencies. The District will endeavor to inform the Applicant of permits which may be required. The District, however, will not be responsible if the Applicant fails to obtain any required permits.

**Subd. 2. Administrative Review and Approval.** It is administratively burdensome for the Board to review every District permit application. Therefore, the District may authorize permit applications to be reviewed by District staff and/or consultants and then approved administratively by the District Administrator.

- a. The District Administrator may work with consultants for a technical analysis on the administrative review of a permit. The District may assess the reasonable costs of such technical analysis to the Applicant and require payment of such costs before the District issues the respective permit.
- b. The District Administrator may add reasonable conditions or provisions to the approval of a permit to address site-specific or activity-specific concerns.
- c. If a permit meets the administrative approval requirements established by the Board of Managers, but the District Administrator determines that administrative approval is inappropriate due to an unusual circumstance, the permit shall be brought before the Board for approval.
- d. All administratively approved permits shall be deemed issued when signed by the District Administrator and all pre-issuance conditions or provisions of the permit have been satisfied including, but not limited to, required submittals, bonds, sureties, letters of credit and payment of all fees.
- e. The District Administrator shall provide reports to the Board of all administratively approved permits.
- f. The District Administrator may not deny a permit. The District Administrator must instead bring the permit application before the Board with a recommendation for denial of the permit application, including proposed written reasons for denial.

**Subd. 3. Board Approval.** The Board of Managers shall review the Staff recommendations for all permit applications that are not administratively approved.

- a. The Board of Managers shall review permit applications at regularly scheduled meetings. A permit may be reviewed by the Board of Managers at a special meeting when requested by an Applicant, and at the Applicant's sole expense.
- b. The Applicant or a representative of the Applicant is highly recommended to be present at the respective meeting where the Board of Managers is to review the Applicant's application to answer questions about the permit application.

- c. The Board of Managers may add reasonable conditions to the approval of a permit to address site-specific or activity-specific concerns. These conditions must be recorded as part of the permit.
- d. If the Board of Managers denies an application, written reasons for the denial will be provided within 15 days.

**Subd. 4. Conditions.** A permit may be approved subject to reasonable conditions to assure compliance with the requirements and intent of these rules and address site-specific or activity-specific concerns. All conditions of the permit, to the extent possible, must be satisfied before the permit is discharged. Conditions requiring performance prior to initiation of work must be satisfied before the permit is deemed to be issued and the Applicant can begin work.

- a. Inspections, consistent with Rule 3, Subd. 1(f), may be required to ensure that the Applicant complies with the conditions of the permit. Inspection fees must be paid as a condition of all permits.
- b. By requesting and receiving a District permit, an Applicant affirmatively grants the District a right of entry onto the Applicant's property for the purpose of performing required site inspections, or completion of the Project in the event of default or other enforcement activities.

**Subd. 5. Deadlines for Action.** The District will seek to approve or deny a permit application within 60 days after receipt of a complete application, including all required submittals and full payment of fees.

- a. An application that requires a site inspection is not deemed complete until a site inspection is completed by District Staff or consultant. Within 15 business days of receiving an application, the District will notify the Applicant if the application is incomplete and whether the application requires a site inspection and is therefore incomplete until the site inspection is performed.
- b. The District will comply with Minnesota Statutes Section 15.99 where it is applicable. Failure to meet an approval deadline shall not authorize any activity for which a permit cannot be granted because the activity is unlawful under applicable law.
- c. If a state or federal law or court order requires a process to occur before the District acts on an application, or if an application requires prior approval of a state or federal agency, any applicable deadline for the District to approve or deny is extended to 60 days after completion of the required process or the required prior approval is granted.
- d. Before the expiration of the initial 60 days, the District may extend any applicable initial 60-day period to 120 days by providing written notice of the extension to the Applicant.

**Subd. 6. Performance Surety.** In accordance with Minnesota Statutes, the Board may require a performance surety, such as an approved escrow deposit, a bond, or an irrevocable letter of credit, to secure performance of permit conditions and compliance with District rules. The federal

government, State, and Political Subdivisions are exempt from the requirements of this subdivision.

- a. When the Board of Managers requires a performance surety, it shall be for an amount sufficient to cover the potential costs of restoration that may result from a violation of the permit. The District consulting engineers shall assist in determining this amount.
- b. The performance surety must be in a form acceptable to the District and from a surety company licensed to do business in Minnesota.
- c. The performance surety must be in favor of the District and be conditioned on the Applicant's compliance with the terms of the permit. The performance surety must allow the District to claim the performance surety if the conditions are not met and use the forfeited funds to complete the work. If the surety funds are insufficient to complete the work, the Applicant may be assessed for the balance. Unused funds shall be returned to the Applicant.
- d. The District shall release the performance surety in writing after the Board of Managers deems all work has been completed in compliance with the District permit and District rules. The District, in writing, may release a portion of the surety if the entire surety, in the District's sole discretion, is no longer necessary to secure compliance with the permit and District rules.
- e. When a permit is conditionally approved upon the Applicant providing a performance surety, the surety must be provided to the District before the permit is deemed to be issued and the Applicant can begin work.

**Subd. 7. Assignment and Transfer of District Permits.** An assignment or transfer of a District permit to another Person or Political Subdivision without a change in the approved plans may be approved by the District Administrator or the Board, whomever approved the original permit. No assignment or transfer of a District permit is allowed where the approved plans are changed. A change in the approved plans requires a new permit application. No assignment or transfer, regardless of whether the assignment or transfer is approved by the District Administrator or the Board, shall relieve the original Applicant from liability for failure to comply with the original permit.

**Subd. 8. Expiration of District Permits.** Permits are valid for 12 months from the date they are issued. Expiration of a permit does not release the permit nor does it relieve the application of the permit conditions. Rather, expiration of a permit cancels the District's permission to perform the work. Permit extensions may be granted by the District Administrator or the Board, whomever approved the original permit. Extension requests must be made in writing at least 30 days before the expiration of the permit. Additional conditions may be added to the permit when an extension is requested.

**Subd. 9. Phased or Multi-year Projects.** For phased projects or projects to be implemented over a period of years, an Applicant may request and the District may grant approval of a permit to be valid for a period of greater than 12 months.

**Subd. 10. Exception.** The Board may hear requests for an exception from the provisions of these rules in the rare circumstances where strict enforcement would cause Undue Hardship because of conditions unique to the property under consideration and not created by the landowner. Such a request must be addressed to the Board as part of a permit application. In order to grant an exception, the Board must find that the request meets ALL of the following four standards:

- a. Special conditions apply to the Applicant's property that do not apply generally to other property within the District.
- b. Because of the unique conditions of the property involved, Undue Hardship to the Applicant will result, as distinguished from mere inconvenience, if the strict letter of the rules is carried out.
- c. The proposed activity for which the exception is sought will not adversely affect the public health, safety, and welfare; will not create extraordinary public expense; and will not adversely affect water quality, flood control, or drainage in the District.
- d. The intent of the District's rules is met.

An exception expires when the permit it is associated with expires. A violation of any condition for a permit where an exception has been granted shall automatically terminate the exception.

**Subd. 11. Coordination with Adjacent Jurisdictions.** The Board of Managers may, by Joint Powers or other agreement, coordinate with an adjacent jurisdiction to allow single permitting of an activity lying in both jurisdictions. In evaluating the propriety of such an agreement, the Board of Managers shall evaluate the consistency of regulatory standards between the District and the adjacent jurisdiction, the efficiency of allowing a single permit, and the proportion of the total project lying within the boundary of the District as compared to that lying within the adjacent jurisdiction and whether that adjacent jurisdiction has the capability and desire to ensure the District's rules and permit conditions and provisions are met.

## **RULE 4. STORMWATER**

**Subd. 1. Purpose.** A Plan objective is to regulate stormwater runoff discharge on a watershed-wide basis to minimize flood problems, flood damages and the future costs of building and maintaining stormwater management systems; and to prevent structural damages during storms up through the critical 100-year precipitation event. The intent of Rule 4 is to support the flow requirements of the NPDES permit, and to supplement those requirements to include maintenance of stormwater flows of the 10 year and 100 year storm events. This rule only applies to projects that disturb more than 1 acre of surface area and/or are required to obtain an NPDES permit.

**Subd. 2. NPDES Permit Required** The District supports the Minnesota Pollution Control Agency (MPCA) in its administration of the National Pollutant Discharge Elimination System (NPDES). Submission of evidence that the project has obtained an NPDES Construction Stormwater Permit is required for any development of property, project, or a series of projects in close proximity resulting in the disturbance of one acre or more. No separate CRWD permit is needed, but standards of this rule apply.

**Subd. 3. Standards.** Any project that disturbs more than 1 acre of surface must meet the following standards:

- a. Rainfall calculations will be modeled utilizing Atlas 14 rainfall intensities localized to the project location and 24 hour duration.
- b. The runoff rate from the project area after development shall not exceed runoff rates for the 2-year, 10-year, and 100-year 24-hour rainfall events, and 6.7 inch 100-yr, 10-day snow melt runoff event for the predominant land use over the last 10 years.
- c. Within 5 days of issuance by the MPCA, the Applicant must submit a copy of the NPDES permit to the District, together with a site plan, stormwater pollution prevention plan (SWPPP), and drainage summary for the project. The site plan and drainage summary will detail the “pre” and “post” project runoff rates, impervious surface areas, watershed areas, and proposed stormwater facility designs versus NPDES and District requirements. Runoff calculations need not be submitted, but must be made available both in .pdf and/or digital (HydroCad etc.) format if requested by the District.

## RULE 5. DRAINAGE

**Subd. 1. Purpose.** A Plan objective is to establish rules regarding flood control and rate control and to not create flood conditions that are worse than currently exist. The District intends to maintain water conveyance capacity (“no net increase of peak discharge rates”) and improve water quality by regulating certain Drainage Ways within the watershed. **This is accomplished through permit tracking and communication, along with water flow standards that promote the water retention goals of the District.** This rule is not intended to regulate Public Drainage Systems and municipal storm sewer systems above Outfalls. Culverts within municipal boundaries remain subject to this Rule.

**Subd. 2. Permit Required for Drainage Work.** A District permit is required for the following “Drainage Project” as defined by the following criteria:

- a. Any Repair or Improvement on an existing Private Drainage System, or construction of a new Drainage Way
- b. All construction and repair of any bridge or culvert within a Drainage Way.
- c. Emergency Repairs: In the event of damage or destruction of a Drainage Way, bridge, or culvert as the result of a catastrophe, natural or otherwise, replacement of such facilities to the same size and condition may be conducted without first obtaining a permit from the District; however, an after the fact permit must be obtained.

Activities Exempt from Permitting:

1. Private tile system work is exempt and does not require a permit.
2. Converting private open channel ditches to underground tile is exempt and does not require a permit.
3. ~~Routine maintenance~~ **Repair** projects where the total project length is less than 250 lineal feet, do not require a permit.
4. Tree removal projects where only clearing (cutting of trunks) is performed are exempt and do not require a permit. A tree removal project where grubbing (removal of stumps) is performed requires a permit.
5. Sediment removal from roadway ditches does not require a permit.
6. Work within municipal storm sewer systems above the Outfalls is exempt and does not require a permit.

**Subd. 3. Standards.** A permit application under this Section must meet the following standards:

- a. ~~The Drainage Project must provide for no net increase in peak discharge rates as the original structure or conditions unless Applicant must submit sufficient documentation that the Drainage Project will not increase downstream flooding.~~ **The Repair must demonstrate that the project will not adversely affect downstream soil stability or infrastructure, subject to flooding.**
- b. The Drainage Project must be constructed so as to reasonably minimize soil erosion, giving due consideration to the intended capacity of the Drainage Project, its depth, its grade, and the character of the soils through which the drain passes.

- e. ~~Any Drainage Project taking place on a Private Drainage System shall include the establishment of vegetated buffers on both sides of the Drainage Way to capture sediment. These buffers must be at least 16.5 feet in width along the entire work area, or of such width as required by other agencies rules and/or ordinances (protected waters, shoreland, etc.) and shall be established within 12 months from the date of permit approval. If the work area is non-contiguous, the buffers will be established between and including the most upstream and most downstream work areas.~~
- d. Provide and maintain a stable and adequate outfall that minimizes erosion and downstream sedimentation in accordance with MPCA guidance documents.
- e. All trees and brush cut from the banks of Drainage Ways shall be removed and disposed of properly and not piled alongside the Drainage Way
- f. **The Applicant must demonstrate that there is a plan in place to adequately vegetate or stabilize the banks and vulnerable soil conditions which are created as a result of the project activity. The Repair project must secure the banks through vegetation establishment or other staff approved erosion control methods such as but not limited to hydro seeding, hydro mulching, or erosion control blanket. Stabilization must be initiated immediately to limit soil erosion whenever any construction activity has permanently or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Timing for erosion control may need to be modified from plan, as weather dictates. This standard also applies to tree removal where grubbing (removal of stumps) takes place.**
- g. ~~Maintenance~~ **Repair** of an existing Private Drainage System is allowed if the Applicant submits sufficient documentation demonstrating that the proposed **Maintenance Repair** will return the Drainage Way to its original constructed conditions. The documentation must identify the original constructed alignment, profile grade, and cross section. If the original design of the Drainage System is not available, a staff approved drawing must be completed that shows pre-project (existing) elevations and proposed final elevations. An example will be provided by the District upon request. **The applicant may defer to staff to solicit engineering services to provide obligatory documentation of existing, proposed or as built documentation. The applicant must allow for the District to notify the downstream landowner(s) of proposed activities. All plans, surveys and drawings must report the vertical datum used (based on sea level) and all elevations must be reported in reference to that datum (either NGVD 29, NAVD 88 or a comparable standard). The Applicant must also submit either (1) signed permission from the landowner(s) directly downstream of the "Maintenance Activity" documenting their approval of the proposed project; or (2) sufficient engineering data demonstrating that the Maintenance Activity will not have a negative downstream impact.**
- h. A proposed Improvement to a Drainage Way may be approved if the Applicant can demonstrate that the Improvement will not result in a negative downstream

impact. The applicant must allow for the District to notify the downstream landowner(s) of proposed activities. The proposed Improvement must be analyzed with the District's hydrologic and hydraulic model or demonstrated by calculations performed by a Professional Engineer Licensed in the State of Minnesota. Costs associated with this review are the responsibility of the Applicant.

- i. Upon the completion of ~~Maintenance~~ Repair Activity or Improvement, an "as-built" drawing must be submitted to the District to demonstrate that the work was completed to the approved permit standards. The drawing form will be provided to the applicant by the District must include information similar to that provided as part of the permit application. An example will be provided by the District upon request. The as-built drawing must be submitted to the District within 120 days of completion of the project. If not, the District will contract with an engineering firm to complete an as built survey that the drainage system owner will pay for through real estate taxes. Once submitted to the District, the as-built drawing will then serve as the baseline for future projects.
- j. ~~A Maintenance Activity that does not exceed 500 linear feet of work is exempt from the standards in paragraphs (f) and (h) in this Subdivision.~~
- k. A permit application for any Drainage Project, Maintenance Activity or Improvement, with all required submittals, must be submitted and a permit form approved by the District before any construction activity commences.

**Subd. 4. Driveway Culverts.** Installation or repair of driveway culverts under driveways along municipal, township, county or state roadways do not require Permits, but must be installed in a manner that prevents downstream erosion and does not increase flowage capacity from the conditions existing prior to the installation.

**Subd. 5. No Illicit Discharges.** No illicit discharges shall be connected to any Drainage Facility including, but not limited to, wastewater treatment systems, untreated sewage, wash stations, manure management facilities and household drains and floor drains from any industrial or agricultural building.

## **RULE 6. FLOODPLAIN**

**Subd. 1. Purpose.** A Plan objective is to prohibit net filling in the floodplain and develop a “no net loss of floodplain” rule. The District intends to preserve existing water storage capacity below 100 year high water elevations on all Waterbodies or detention areas in the watershed to minimize the frequency and severity of high water. The District also intends to minimize development below projected 100 year high water elevation that will unduly restrict flood flows or aggravate known high water problems.

**Subd. 2. Permit and Plan Required for Floodplain Alteration or Construction Within the Floodplain:** A District permit is required for the following “Floodplain Project”:

- a. Alteration or filling of land below the projected 100 year high water elevation of a Waterbody or detention area.
- b. Construction of a structure with a low floor elevation lower than the adjacent 100 year floodplain.

New development projects that fill less than 50 cubic yards of compacted material within the floodplain are considered de minimis impacts and do not require a permit.

Maintenance activities where less than 250 cubic yards of compacted material is being placed to replace naturally eroded material does not require a permit. The amount of materials placed may not exceed those estimated to have been eroded within the last 2 years.

### **Subd. 3. Standards**

- a. The proposed Floodplain Project shall not cause a net decrease in storage capacity below the District-established 100 year high water elevation (except as specifically permitted in this Rule). If projects exceeds 250 cubic yards, the “Impacts” of the proposed Floodplain Project shall be calculated for a) the floodplain storage volume, b) peak discharge rates, and c) water levels. The calculations shall be completed by a Professional Engineer Licensed in the State of Minnesota and who has training in hydrologic and hydraulic calculations, and shall be subject to review by the District Engineer.
- b. Minimum building elevations: The following minimum building elevations shall be met for all new structures located within the CRWD established 100-year Floodplain (as may be amended from time to time by the District):
  - i. The lowest floor (including basement) must be at least 1 foot above the 100-year floodplain elevation; this requirement is equivalent but not limited to the regulatory flood protection elevation within FEMA-designated floodplains.
- c. If the proposed Floodplain Project has a negative Impact in excess of 50 compacted cubic yards, the Applicant shall submit a CRWD approved Mitigation Plan ~~“Sequencing Process” that assures that the Impacts are first avoided where possible, second minimized to the greatest extent possible, lastly Mitigated with~~

~~similar benefits. The Mitigation Process shall meet the following standards and Sequencing requirements:~~

- ~~i. Applicants must demonstrate that any Impacts are needed to reasonably complete a project.~~
- ~~ii. Applicant must demonstrate that alternatives have been considered to avoid and minimize all Impacts.~~
- ~~iii. For any Impacts that are unavoidable, the Mitigation Process must complete on-site compensatory storage. If on-site compensatory storage is proposed, the Applicant must demonstrate that Impacts will be replaced at a ratio of 1:1 on-site. Creation of floodplain compensatory storage to offset any Impact shall occur within the permit term.~~
- ~~iv. In a case where any Impacts cannot be reasonably mitigated by on-site replacement, the Mitigation Process must complete off-site compensatory storage. Off-site compensatory storage must demonstrate that the Impacts will be replaced at a ratio of 1.5:1; and must not a) increase the peak discharge rates or b) increase 100-year flood elevations, as demonstrated by calculations performed by a Professional Engineer Licensed in the State of Minnesota, subject to review by the District Engineer.~~
- ~~v. The Mitigation Process must also demonstrate mitigation of Impacts through a) acquisition of flood easements on impacted properties; and b) armoring and stabilization of areas exposed to increased flow velocities and/or elevations compared to pre-existing conditions, as demonstrated by calculations performed by a Professional Engineer Licensed in the State of Minnesota, subject to review by the District Engineer.~~

~~**Subd. 4. Activities in Floodplain Prohibited.** Storage piles or other floodplain impact shall be prohibited in the floodplain.~~

**Subd. 5. Snow Storage.** Snow storage from any off-site location is prohibited in the Shoreland area and Floodplain, unless each of the following conditions are met:

- a. Any storage area is set back at least 100 feet from any Drainage Way.
- b. All snow storage is performed utilizing District-approved Best Management Practices.
- c. An annual runoff control and best management practices plan is approved by the District prior to October 1<sup>st</sup> of each year.

## **RULE 7. WATERBODY ALTERATIONS**

**Subd. 1. Purpose.** Plan objectives are to protect water resources in the District from land use impacts, maximize the water quality and quantity benefits of wetlands, and decrease the risk of flooding throughout the District. The District encourages no adverse impacts to neighboring landowners. The District intends to regulate the intentional flooding of land, surface water and storage detention areas and the alteration of waterbodies in order to improve water quality, maintain drainage capacity, and minimize the impacts of flooding.

**Subd. 2. Permit and Plan Required for Waterbody Alterations.** A District permit is required for the following “Waterbody Project”:

- a. The intentional flooding of land or enlargement of a Waterbody by means of diversion, detention, or impoundment within the District.
- b. The construction, installation or alteration of any Water Control Structure in any Waterbody within the District.
- c. The diversion of water into a different 12 digit Hydrologic Unit.

**Subd. 3. Standards.** A permit application under this Section must meet the following standards:

- a. Unless for the purpose of water quality or floodplain management, the Waterbody Project shall not result in an increase in the 100-year flood level on any Person’s property other than the Applicant’s property without first obtaining written approval from the owners of property that could be potentially impacted by such construction and shall be consistent with the District Engineer’s or Consultant’s recommendations.
- b. All work shall be conducted so as to minimize increases in suspended solids and turbidity in run-off discharge or in receiving waters. Management practices such as the establishment of vegetated buffers to capture sediment shall be incorporated into plans.
- c. The intentional flooding of land or enlargement of a Waterbody by means of diversion, detention, or impoundment and the construction, installation or alteration of any water control structure in any Waterbody must not flood adjacent, nearby, upstream or downstream properties. The Applicant must demonstrate that adequate measures have been taken to protect adjacent, nearby, upstream and downstream properties from flooding or that necessary easements or other interests have been obtained.
- d. The Applicant must include with its application the maximum and average depth, and the 100-year flood and normal elevation of water in any detention basin, impoundment, wetland, pond or slough affected by the Waterbody Project.
- e. The Applicant must include with its application the design elevation of all proposed dikes, dams, levees, berms, or any area filled higher than original ground level. The design of any proposed dikes, dams, levies, or berms must include a dedicated emergency overflow designed to not allow the flows to wash

out the dike, dam, levee, or berm and to convey overflows without causing downstream erosion.

- f. The Applicant must include with its application computations regarding the capacity and design of any Waterbody Project.
- g. The Applicant must show, in relation to the elevation of any structures, detention basins, impoundments, wetlands, ponds or sloughs, the location, size and capacity of all outlets for water from the Waterbody Project;
- h. A site drawing must be submitted with the permit application in accordance with CRWD Permit Application.
- i. The Board may require an engineering study for any Waterbody Project where improper construction or failure could have a significant impact on water quality or could flood adjacent, nearby, upstream or downstream properties.
- j. The Applicant must consider on-site and adjacent peak flow reduction as part of the design.
- k. Upon completion of the project, the Applicant shall provide as-built engineering specifications and drawings for the project, including an operations and maintenance plan for the project.

## **RULE 8. EROSION CONTROL**

**Subd. 1. Purpose.** An objective of the Plan is to minimize erosion and its effects on water quality. The District intends to minimize erosion of land by regulating Land Disturbing Activities to minimize the impacts of land disturbance on downstream water quality. The District requires that erosion and sediment control measures or best management practices must be in place for all Land Disturbing Activities above specific thresholds. The erosion control measures must minimize erosion and deposition of sediment off-site and maximize on-site sediment removal to the greatest extent reasonably possible. No permit is needed, but the following standards of this rule apply.

**Subd. 2. Erosion Control Methods:** land disturbing activities that disturb greater than one acre will employ erosion and sediment control practices as required by the NPDES permit issued by the MPCA.

**Subd. 3. Erosion Control Methods For Land Disturbing Activities Less than One Acre.** All Land Disturbing Activities less than one acre of land and greater than 2500 square feet are considered “Small Construction Sites” and are required to have the following erosion and sediment control best management practices in place.

- a. Perimeter Control- Down gradient silt fence or other approved method as listed in the Minnesota Storm Water Manual.
- b. Vehicle Tracking Control- Rock or wood mulch construction entrance measuring at least 8’ wide and 20’ long. All construction access and egress shall be through this entrance.
- c. Stockpile Control- All stockpiles not being actively used shall be either covered with an impermeable sheet or protected by silt fence, no further than 3’ from the base of the stockpile.
- d. Turf Establishment- Upon completion of final topsoil grading and seeding, the soil shall be covered with straw mulch (disked in), liquid tackifier, or erosion control blanket. Perimeter controls shall remain in place until this is completed.
- e. Good Housekeeping- Any sediment that is transported off site shall be cleaned up and replaced on site within 24-hours of discovery. This includes any sediment in the roadway or gutter.

Erosion and Sediment Control on Small Construction Sites is the joint responsibility of the Applicant and the General Contractor for the site.

**Subd. 4. Agricultural Soil Erosion Control Methods.** The following standards apply to all Agricultural Land Disturbing Activities:

- a. All “Agricultural Land Disturbing Activities” shall comply with the following standards:
  - i. Control erosion of Land Disturbing Activities associated with the agricultural use of land to rates no greater than soil loss tolerances.

- ii. Protect wetlands, lakes, streams, and ditches from excessive sedimentation resulting from Land Disturbing Activities associated with agricultural use of land;
  - iii. Abate or minimize impacts of excessive sedimentation from agricultural use of land to adjoining lands; and
  - iv. Ensure proper maintenance of agricultural erosion control practices.
- b. This Rule and the performance standards described herein shall apply to Agricultural Land within the District for the control of excessive erosion, excessive sedimentation, and their associated impacts. Land occupiers conducting Land Disturbing Activities on Agricultural Land are encouraged to seek technical assistance from the District or a conservation district and to apply necessary agricultural erosion control practices. Furthermore, alleged violation of this Rule may be addressed through any of the following procedures:
  - i. Voluntary initiation by a land occupier who desires an agricultural erosion control plan to be prepared and implemented for any Agricultural Lands which are under his/her control; or
  - ii. Initiation of a complaint by any Person; or
  - iii. Notification of the District by any appointed or elected county, township, conservation district or District official suspecting a violation upon conducting routine official business; or
  - iv. By notifying the District if an erosion assessment conducted by the conservation districts indicates that a potential violation is occurring. This erosion assessment may be conducted by the District, county or the conservation district as part of ongoing programs.
- c. Special Considerations. Erosion, sedimentation, or their associated impacts resulting on Agricultural Land shall be given special consideration regarding potential enforcement actions pursuant to this Rule if any of the following conditions existed during the alleged violation of this Rule:
  - i. "Excessive erosion" due to gully erosion resulting from a rainfall event of an intensity equal to or greater than a 10-year, 24-hour return Interval; or
  - ii. "Excessive sedimentation" due to sheet and/or rill erosion resulting from a rainfall event of an intensity equal to or greater than a 10-year, 24-hour return interval; or
  - iii. "Excessive sedimentation" due to gully erosion resulting from a rainfall event of an intensity equal to or greater than a 10-year, 24-hour return interval; or

- iv. "Excessive sedimentation" due to wind erosion resulting from a wind event of an intensity or duration deemed by the District to be beyond the control of the alleged violator.
- d. Excessive Erosion and Excessive Sedimentation Prohibited. A land occupier may not cause, conduct, contract for, or authorize a Land Disturbing Activity on Agricultural Land that results in excessive erosion or excessive sedimentation.
- e. Complaints. Any Person may initiate a verbal or written complaint to the District if conditions exist that would indicate any of the following:
  - i. Excessive erosion is occurring as the result of Agricultural Land Disturbing Activities, or
  - ii. Excessive sedimentation is occurring as the result of Agricultural Land Disturbing Activities, or
  - iii. The results of either (a) or (b) have adversely affected another individual's welfare or safety or property.

Any complaint should include the following information:

- i. the name and address of the allegedly offending land occupier(s);
- ii. the location of the tract of Agricultural Land upon or from which excessive erosion, excessive sedimentation, or their associated adverse effects are occurring or have resulted;
- iii. the water or adjoining land that is affected by the alleged offending Agricultural Land Disturbing Activities; and
- iv. a description of the nature of those Land Disturbing Activities and the resulting adverse effects.

The District staff shall first review the complaint for substantiation within 30 calendar days of the receipt. When the complaint is field checked for substantiation, the district staff shall notify the land occupier in writing. If the district staff determines the complaint lacks substantiation, the complaint may be dismissed. If the complaint is dismissed, the District board shall notify the complainant, and the alleged offender(s) that the complaint has been dismissed within 75 calendar days of the receipt of the complaint.

If the District staff determines the complaint is legitimate, the District staff shall, within 30 calendar days of its receipt prepare a report on the Agricultural Land Disturbing Activity in question and the associated erosion or sedimentation or alleged adverse effects from the Land Disturbing Activity. The District shall also notify the complainant and the alleged offender(s) of these actions within 75 calendar days.

- f. Remediation Required. Whenever the Board of Managers has determined, based upon a report prepared by the District staff that any roadway, right-of-way, or

drainage conveyance under the jurisdiction of the county or townships has been adversely affected by sedimentation resulting from Agricultural Land Disturbing Activities under the control of an offending land occupier, the District shall seek remediation of the adverse effects. Remediation shall consider, but not be limited to, any of the following actions or combinations of actions;

- i. Requesting the SWCD County Engineer or township official to direct or oversee the excavation of the resultant sediment deposited due to Land Disturbing Activities from the land in question and under the control of the offending land occupier and adjacent to the adversely affected county or township roadway, right-of-way, or drainage conveyance;
- ii. Requesting the SWCD, County Engineer or township official to direct or oversee the restoration of the adversely affected county or township roadway, right-of-way, or drainage conveyance to its intended design specifications;
- iii. Requesting the SWCD, County Engineer or township official to direct or oversee the transport of the excavated sediment to a mutually agreed-to location on the offending land occupier(s) land; and/or
- iv. Billing all costs for remediation directly to the offending land occupier with notification that costs are to be paid in full to the county or township treasurer within 180 calendar days.

If the offending land occupier does not remit full payment to the District, county or township treasurer within the specified time limit, the District, county or township shall determine the land so benefited and assess the land the cost of the remediation. Such assessments shall be made only against that portion of the tract of land on which the remediation order pertained and shall not be an amount so as to result in Undue Hardship.

## RULE 9. ENFORCEMENT

**Subd. 1. Violation of Rules is a Misdemeanor:** ~~Violation of these rules, a stipulation agreement made, or permit issued by the Board of Managers under these rules, is a misdemeanor subject to a penalty as provided by law.~~

### Subd. 1 Manner of Enforcement:

In the event of a violation or threatened violation of a District Rule, Permit, order, stipulation, or a provision of M.S. 103D, the District may take action to prevent, correct, or remedy the violation or any harm to water resources resulting from it. Enforcement action includes, but is not limited to injunction; action to compel performance, abatement or restoration; and prosecution as a criminal misdemeanor in accordance with M.S. 103D.545 and M.S. 103 D. 551.

No additional Permit shall be issued to any applicant who is in violation of District Rules or a previously issued Permit until such violation has been remedied to the satisfaction of the Board.

### Subd 2. Investigation of Noncompliance

Statutes section 103D.335, subd. 14 allows the District authorized representative to enter and inspect a property inside or outside the watershed district to make surveys and investigations to determine the existence of a violation or threatened violation. In all cases the District will attempt to contact the landowner prior to entry. The District is liable for actual damages resulting from entry.

**Subd 2. District Court Action:** ~~The District may exercise all powers conferred upon it by Minnesota Statutes Chapter 103D in enforcing these rules, including criminal prosecution, injunction, or action to compel performance, restoration or abatement.~~

**Subd 3. Administrative Order:** ~~The District may issue a cease and desist or compliance order when it finds that a proposed or initiated project presents a serious threat of soil erosion, sedimentation, or an adverse effect upon water quality or quantity, or violates any rule or permit of the District.~~

The District may issue orders directing correction of violations of these Rules or directing a property owner or entity to show cause why the District should not initiate enforcement actions. If a show cause order is issued, a landowner or entity shall be given an opportunity to be heard by the Board at its next regular meeting. If a violation or threatened violation of these Rules presents a serious threat of adverse effect on water resources, the District may proceed directly to the District Court for an injunction to stop or correct the violation.

### Subd 4. Board Hearing:

After due notice and a show cause hearing at which evidence may be presented, the Board shall make findings. If the Board finds a violation exists and no good cause is shown to prevent the initiation of enforcement actions, it shall issue an order: requiring that the property owner, entity or responsible contractor to cease the violating work, apply for an after-the-fact Permit, or take corrective or restorative action; authorizing the initiate of enforcement actions in the District Court; or directing other action to compel compliance with these Rules.

### Subd 5. Liability for Enforcement Costs

In any civil action arising from or related to a rule, order, or stipulation agreement made or a Permit issued or denied by the Board under this chapter, the court may award the prevailing party reasonable attorney fees and costs.

### Subd 6. Contractor Liability

Any individual, firm, corporation, partnership, association or other entity contracting to perform work subject to one or more District Rules, shall be responsible to ascertain that the necessary Permit has been obtained and that the work being performed complies with the Permit conditions, Rules, statutes and any applicable District orders or stipulations. A contractor that, itself or through a subcontractor, engages in work constituting a violation or threatened violation shall be the responsible contractor for purposes of this rule.

**Subd 7. Financial Surety**

In accordance with Minnesota Statute 103D.345 Subd. 4, the District may require a performance surety, such as an approved escrow deposit, a bond, or an irrevocable letter of credit, to secure performance of permit conditions and compliance with these Rules. The federal government, State, and political subdivisions are exempt from the requirements of this subdivision.

- A. When required a performance surety, it shall be for an amount sufficient to cover inspection fees and the potential costs of restoration that may result from a violation of the permit. The District engineer and staff shall assist in determining this amount.
- B. The performance surety must be in a form acceptable to the District and from a surety company licensed to do business in Minnesota.
- C. The performance surety must be in favor of the District and be conditioned on the applicant's compliance with the terms of the permit. The performance surety must allow the District to claim the performance surety if the conditions are not met and use the forfeited funds to complete the work, if necessary. If the surety funds are insufficient to complete the work, the applicant may be assessed for the balance. Upon satisfactory completion of the permitted work the surety shall be released and unused funds shall be returned to the applicant.