

Yellow Medicine River Watershed District Rules and Regulations

Mission Statement:

The Mission of the Yellow Medicine River Watershed District is to provide and organized means for proper management and protection of the water resources in the Yellow Medicine River Watershed. To carry out all the responsibilities of the Minnesota Watershed Act as set forth in Minnesota Statute, Chapter 103D. To carry forth all activities and powers given under the Minnesota Drainage code in Minnesota Statute, Chapter 103E. The District will encourage the wise use of the Natural Resources within its boundaries and promote the improvement of the health and welfare of its citizens.

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Section 1.0 Introduction

The Yellow Medicine River Watershed District was established by Order of the Minnesota Water Resources Board on August 26, 1971.

1.01 Statutory Policy

Minnesota Statute 103D.201, subdivision 1: To conserve the natural resources of the State by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources, the establishment of watershed districts is authorized under this chapter.

1.02 Statutory Authority to Adopt Rules

Minnesota Statute, 103D.341, subdivision 1: The managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers.

1.03 Short Title

These rules shall be known and may be cited as the "Yellow Medicine Watershed District Rules."

1.04 Jurisdiction

The jurisdiction of these Rules shall include all of the area, incorporated, and unincorporated, including both land and water, within the territory of the Yellow Medicine River Watershed District. The Board recognizes that in the management of land use primary control rests with county, city, and town.

1.05 Adoption or Amendment of these Rules

Subdivision 1. Minnesota Statutes 103D.341, Subdivision 2: Rules of the Watershed District must be adopted or amended by a majority vote of the managers, after public notice and hearing. Rules must be signed by the Secretary of the Board of Managers and recorded in the Board of Managers' official minutes.

Subd. 2. Prior to adoption, the proposed rule or amendment to the rule must be submitted to the Board of Water and Soil Resources for review and comment. The board's review shall be considered advisory. The board shall have 45 days from receipt of the proposed rule or amendment to the rule to provide its comments in writing to the watershed district. Proposed rules or amendments to the rule shall also be noticed for review and comment to all public transportation authorities that have jurisdiction within the watershed district at least 45 days prior to adoption. The public transportation authorities have 45 days from receipt of the proposed rule or amendment to the rule to provide comments in writing to the watershed district.

Subd. 3. For each county affected by the Watershed District, the managers must publish a notice of hearing and adopted rules in one or more legal newspapers published in the county and generally circulated in the Watershed District. The managers must also provide written notice of adopted or amended rules to public transportation authorities that have jurisdiction within the watershed district. The managers must file adopted rules with the county recorder of each county affected by the Watershed District and the Board of Water and Soil Resources.

Subd. 4. The managers must mail a copy of the rules to the governing body of each municipality affected by the Watershed District.

Subd. 5. Minnesota Statute 103D.341, Subdivision 3: A rule or resolution that affects land or water within the boundaries of a city is not effective within the city's boundaries until the governing body of the city is notified.

Subd. 6. Each rule adopted by the Board of Managers shall have the full force and effect of law.

1.06 Inconsistent Provisions

If any rule or rules herein contained are inconsistent with the provisions of the water law of the State of Minnesota as established by Minnesota Statutes Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G, or other applicable state or federal law, then such state or federal law shall govern.

1.07 Scope.

It is not intended by these rules to repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other laws or with private restrictions placed upon property by covenant, deed, or other private agreement.

1.08 Severability

The provision of these rules shall be severable and invalidity of any section, paragraph, subdivision, or any other part thereof shall not make invalid any other section, subsection, paragraph, subparagraph, subdivision, or any part thereof.

1.09 Rights of Appeal

Any parties believed to be adversely affected by the adoption or enforcement of a rule or any action of the Board of Managers rising out of and pursuant to the adoption or enforcement of a rule may appeal from the rules or any action taken thereon in accordance with the appellate procedure and review provided in Minnesota Statutes 103D.535 and 103D.537.

1.10 Due Process of Law

No person shall, under these rules, be deprived or divested of a previously established beneficial use or right without due process of law.

Section 2.0 More Restrictive Rules and Regulations

2.01 Adoption of Water Law

The Board of Managers of the Yellow Medicine River Watershed District expressly adopts by reference all of the water law of the State of Minnesota, as contained in Minnesota Statutes, Chapter 103A, 103B, 103C, 103D, 103E, 103F, and 103G, as amended. The District reserves the right to impose rules which are more restrictive than those contained in the water law of the State of Minnesota.

2.02 Applicable Rules

The provisions of the following agencies and statutes that are more restrictive than these Rules of the Watershed District shall apply provided said statute, rule, regulation, code, or ordinance applies in whole or in part to any of the purposes for which a Watershed District may be formed according to Minnesota Statute 103D.201, as amended, or applies to any of the powers and duties of the Managers listed in Minnesota Statute 103D.335, as amended.

Subdivision 1. The applicable rules of the Minnesota Board of Water and Soil Resources, Department of Health, Pollution Control Agency, Department of Natural Resources, Environmental Quality Board, Department of Agriculture, United States Environmental Protection Agency, United States Army Corps of Engineers, and other state and federal agencies vested with jurisdiction over water use and policy affecting public waters within the Watershed District.

Subd. 2. The Rules of Lincoln, Lyon and Yellow Medicine Counties' Soil and Water Conservation Districts and all soil and water conservation district laws imposed by Minnesota Statutes, Chapter 103C, as amended.

Subd. 3. Any zoning, sanitation, and subdivision ordinances of Lincoln, Lyon and Yellow Medicine Counties.

Subd. 4. Any ordinances, rules, or regulations of any towns and townships and cities existing in part or in whole within the confines of the Yellow Medicine River Watershed District.

Subd. 5. The Watershed Law, Minnesota Statutes Chapter 103D, as amended.

Subd. 6. The Minnesota Environmental Rights Law, Minnesota Statutes Chapter 116B, as amended.

Subd. 7. The State Environmental Policy, Minnesota Statutes, Chapter 116D, as amended.

Subd. 8. The Minnesota Wetland Conservation Act of 1991, as amended.

Subd. 9. The law regarding Waters of the State, Minnesota Statutes Chapter 103G, as amended.

Section 3.0 Definitions

For purposes of these Rules, certain words and terms are herein defined as followed. In the absence of a definition hereinafter, the definition established for the State of Minnesota by statute or by case law shall apply to these Rules unless clearly in conflict, clearly inapplicable, or unless the content makes such meaning repugnant thereto. Certain terms or words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.

- 3.01 **Best Management Practices** shall mean a technique or series of techniques which has been effective in maintaining or improving water quality by controlling agricultural, urban, or construction related runoff, erosion, and sedimentation.
- 3.02 **Board of Managers** shall mean the Board of Managers of the Yellow Medicine River Watershed District.
- 3.03 **Board.** When not referring to the Board of Managers, Board shall mean the Board of Soil and Water Resources.
- 3.04 **BWSR.** Minnesota Board of Water and Soil Resources.
- 3.05 **Buffer** is an area consisting of perennial vegetation, excluding invasive plants and noxious weeds
- 3.06 **Buffer Protection Map** is the buffer maps established and maintained by the commissioner of natural resources.
- 3.07 **Buffer law.** Minnesota Statutes §103F.48, as amended.
- 3.08 **Commissioner.** Commissioner of the Minnesota Department of Natural Resources.
- 3.09 **Conditional Use** is a land use or development that would not ordinarily be allowed under existing rules or ordinances, but may be allowed with appropriate controls or conditions.
- 3.10 **Cultivation farming** are practices that disturb vegetation roots and soil structure, or involve vegetation cutting or harvesting that impairs the viability of perennial vegetation.
- 3.11 **Drainage authority.** The public body having jurisdiction over a drainage system under Minnesota Statutes chapter 103E.
- 3.12 **Department of Natural Resources or DNR** shall mean the Minnesota Department of Natural Resources.
- 3.13 **Diversion** shall mean a channel constructed across the slope with a supporting ridge on the lower side.

- 3.14 **Fill** shall mean any material placed or intended to be placed on the bed or shoreland of a body of water or watercourse or wetland.
- 3.15 **General Welfare** shall include any act or anything tending to improve or benefit or contribute to the safety or well being of the general public or benefit the inhabitants of the Watershed District. General Welfare shall be synonymous with "Public Welfare" or "Public Benefit".
- 3.16 **Impervious Surface** shall mean a constructed hard surface that either prevents or 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 development. Examples include, but are not limited to, rooftops, sidewalks, patios, storage areas, and roads, streets, driveways, and parking lots constructed of concrete, asphalt, or compacted soils.
- 3.17 Landowner means the holder of the fee title, the holder's agents or assigns, any lessee, licensee, or operator of the real property and includes all land occupiers as defined by Minn. Stat. §103F.401, subd. 7 or any other party conducting farming activities on or exercising control over the real property
- 3.18 **MPCA** shall mean the Minnesota Pollution Control Agency.
- 3.19 **NRCS**. U.S. Department of Agriculture, Natural Resource Conservation Service.
- 3.20 **Parties** shall mean any individual, firm, partnership, association, corporation, landowner, developer, public or political subdivisions, or governmental subdivisions.
- 3.21 **Parcel** is a unit of real property that has been given a tax identification number maintained by the County.
- 3.22 **Plan** shall mean a map, drawing, report, photograph or other similar supportive exhibit for a proposed work project.
- 3.23 **Public Health** shall mean any act or thing or condition that tends to improve the general sanitary or environmental conditions of the Watershed District.
- 3.24 **Private Drainage System** shall mean drainage tile, catchment basins, ditches, diversions, lift stations, or culverts, owned by any individual, firm, partnership, association or corporation, installed for the purpose of agricultural land drainage, but does not include the same owned by public or political subdivisions or governmental subdivisions. A private drainage system shall also include reshaping or removing soils, whether or not deposited by erosion, to cause, enhance, or speed the flow of water across agricultural land.
- 3.25 **Public Drainage System** shall mean drainage tile, catchment basins, ditches, diversions, lift stations, or culverts, owned and maintained by public or political subdivisions or governmental subdivisions, installed for the purpose of agricultural land drainage.
- 3.26 **Public Water**. As defined at Minnesota Statutes §103G.005, subdivision 15, and included

within the public waters inventory as provided in Minnesota Statutes §103G.201.

- 3.27 **Responsible Party.** A party other than a landowner that directly or indirectly controls the condition of riparian land subject to a buffer under the rule.
- 3.28 **Rip Rap** shall mean natural rock or concrete (with no exposed rerod) of at least 12 inches in diameter or larger. It may not be installed more than five feet waterward of the Ordinary High Water Mark. It must conform to the natural alignment of the shore and not obstruct the flow of water. The finished slope may be permitted to have exposed concrete.
- 3.29 **Riparian protection** is a water quality outcome for the adjacent waterbody equivalent to that which would be provided by the otherwise mandated buffer, from a facility or practice owned or operated by a municipal separate storm sewer system (MS4) permittee or subject to a maintenance commitment in favor of that permittee at least as stringent as that required by the MS4 general permit in effect.
- 3.30 **Runoff** is water, including nutrients, pollutants, and sediments carried by water that is discharged from land surface to a water body.
- 3.31 **Shore Impact Zone.** The shore impact zone boundary is a line parallel to and 50 feet from the ordinary high-water level.
- 3.32 **Shoreland standards** refer to local shoreland standards as approved by the Commissioner or, absent such standards, the shoreland model standards and criteria adopted pursuant to Minnesota Statutes §103F.211.
- 3.33 **Structure.** An above-ground building or other improvement that has substantial features other than a surface.
- 3.34 **SWCD.** Soil and Water Conservation District.
- 3.35 **Terrace** shall mean an earthen embankment, a channel, or a combination ridge and channel constructed across the slope.
- 3.36 **Watercourse** shall mean any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent.
- 3.37 **Watershed of Yellow Medicine River Watershed District** shall mean waters of the state as defined in Minnesota Statutes, Chapter 103G.005 Subd. 17, as amended, that are located within the boundary of the Yellow Medicine Watershed District.
- 3.38 **Watershed District** shall mean the legally established agency named and referred to as the Yellow Medicine Watershed District; when the word "district" appears without capitalization, it shall mean the land contained within the boundary of the Yellow Medicine Watershed District.

- 3.39 **Waterway** shall mean a natural or constructed grass channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.
- 3.40 **Wetland** shall mean all wetlands, as defined in the Corps of Engineers 1987 Wetland Delineation Manual.

Section 4.0 Permit Requirements

4.01 Actions Requiring Permits

The following actions shall not be commenced before the issuance of a permit by the Yellow Medicine River Watershed District Board of Managers.

Subdivision 1. The installation of new or improvement of existing public and private drainage systems, excluding normal maintenance.

Subd. 2. The installation of agricultural best management practices that require land alteration including surface tile intakes, terraces waterways and diversions.

Subd. 3. The installation of new surface tile intakes and catch basins.

Subd. 4. The disposal of snow within the shore impact zone of streams, lakes, creeks and rivers.

Subd. 5. The creation of one acre or more of impervious surface.

Subd. 6. The creation of an artificial drainageway across a watershed and thereby delivering water into another subwatershed.

Subd. 7. The diversion of water by any artificial means into any public drainage system from land not assessed into said drainage system, and the excavation, shaping, removal of soils, fence lines, or other natural or artificial structures affecting the flow of water into any public drainage system from land not assessed into said drainage system.

Subd. 8. The alteration, removal, or reconstruction of any private or legal drainage system without a permit from the managers.

Subd. 9. The draining or alteration of natural waterways, streams, lakes, marshes or wetlands, including the bed, banks or shores.

Subd. 10. The construction, alteration, repair or removal of a dike.

Subd. 11. The alternation, construction, removal or abandonment of a reservoir or impoundment of water.

Subd. 12. The construction, reconstruction, repair or replacement of a bridge, culvert or drain laid in, to, or across any natural, legal or private drainageway.

Subd. 13. The construction, reconstruction, removal, or repair of any structure or drainage system, that will disturb the 16.5' buffer along an open ditch in the District is the drainage authority for.

Subd. 14. The performance of other actions that may adversely affect ground water or surface water quality or quantity with the Watershed District.

4.02 Permit Conditions:

Permit 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 deemed to be issued and the applicant can begin work.

Subdivision 1. **Inspections.** Inspections may be required to ensure that the applicant complies with the conditions of the permit. By requesting or 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.

Subd. 2. **Other permissions.** The requirements of any other permissions (NPDES permit, wetland determination, public water permit, road authority permit, impacted landowner signature, etc.) required for the proposed activity are incorporated in the District permit. Obtaining required permissions is the sole responsibility of the permit applicant. A violation of other required permits or permissions is a violation of the District Permit.

Subd.3. Drainage Tiles. A permit for drainage tile will normally be issued provided the tile has a noneroding outlet and no other adverse or water conservation or water management concern exists, such as, but not limited to the following:

- (A) The burdening of a lower or downstream landowner with more water than is reasonable under the circumstances.
- (B) The failure to make adequate provision for the passage of water across the property of a lower or downstream landowner.
- (C) The obstruction of a natural waterway, so as to cause an overflow onto the property of others.
- (D) If the additional drainage caused by the installation of the tile will exceed the capacity of the ditch, waterway, watercourse, private drainage system or public drainage system into which the tile directly or indirectly outlets.

Subd. 4. Alteration of Watercourses. A permit for channelization of watercourses and lakeshore alterations will, at a minimum, require that the exposed banks be mulched and seeded and that all spoil piles be seeded.

Subd. 5. Best Management Practices. A permit for agricultural best management practices that have not been designed by the Natural Resource Conservation Service or Soil and Water Conservation District will, at a minimum, require that measures are taken to minimize the erosion of soil and deposition of sediment.

Subd. 6. Snow Disposal. A permit for disposal of snow within a shoreland impact zone may be issued provided the disposal conditions will not pollute surface water or ground water and no other adverse conservation or water management concerns exist.

Subd. 7. Impervious Surfaces. A permit for creation of impervious surface will, at a minimum, require the submission of plans utilizing standards and procedures for controlling runoff rates, nutrients, and sediments as described by Minnesota Pollution Control Agency. Wetlands may be incorporated to reduce the rate of runoff and improve the quality of discharge.

Subd. 8. Violations: Any violations of permit conditions may result in the permit being revoked, subsequently all actions complete under the revoked permit will be subjected to section 4.03 subdivision 4, After-the-fact permits.

4.03 Permit Procedure Requirements

Subdivision 1. The Board of Managers or their appointed representative, shall act upon an application for a permit within 60 days of the next regular board meeting, after the application is determined to be complete.

Subd. 2. If a permit application is refused or if granted subject to conditions, the applicant may, within thirty days thereafter, demand a hearing on the application.

Subd. 3. Obtaining a permit from the Board of Managers does not relieve the applicant from the responsibility of obtaining any other authorization required.

Subd. 4. After-the-fact permits for any action take on the land for which a permit is required but not obtained prior to taking that action, will be subject to a fee of not less than \$250.00 or exceeding \$750.00 as determined by the Watershed's Board of Managers, plus the actual engineering, attorney's fees, and any other cost incurred by the District in dealing with the un-permitted work.

Subd. 4.1. In determining the after-the-fact permit fee the board will consider the severity of the permit infraction, any prior infractions, and willingness to correct the lack of compliance in a timely manner. If the landowner fails to make a permit application and pay the after-the-fact fee within 30 days after notice of violation is sent to the landowner by US mail, and fails to make any and all changes necessary to be in compliance with any Watershed Rules, drainage law, or permit requirements, an additional fee of \$100.00 per month or any fraction of a month shall be added to the after-the-fact permit fee application.

Subd. 4.2. Nothing in this provision requires the Board of Managers to issue a permit to a landowner who does not meet permitting criteria, or limits the Yellow Medicine Watershed's ability or remedies to require removal or blockage of drainage installed which is not permitted or installed in violation of permit conditions.

Subd. 5. Permits will expire December 31st following the calendar year they were issued. Permit extensions of one year may be granted by the Board or their authorized agent. Additional conditions may be added to the permit when an extension is requested.

Subd. 6. Future Permits: No future permit shall be issued to an applicant in violation of District rules or a previously issued District permit until the violation has been remedied to the sole satisfaction of the District.

Section 5.0 Enforcement Powers of Board Managers

Subdivision 1. Any provision of Minnesota Statutes Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G, as amended, these Rules, or any order issued by the Board of Managers of the Watershed District may be enforced by criminal prosecution, injunction, action to compel performance, restoration, abatement, and other appropriate action.

Subd. 2. Any violation of the provisions of Minnesota Statutes Chapter 103D, these Rules, or any order, stipulation, or agreement made by the Board of Managers of the Watershed District is a misdemeanor in accordance with Minnesota Statutes 103D.545.

Subd. 3. If the Rules are violated, the Board of Managers may issue cease and desist orders and pursue either restoration, corrective measures, administrative penalties and/or damages through either civil or criminal court proceedings.

Subd. 4. Any parties contracting to perform services regulated by these Rules shall be responsible for ascertaining that all permits have been obtained and the work performed complies with all requirements of these Rules. Contractors in violation shall be subject to all sanctions or penalties, criminal or civil, imposed by these Rules.

Subd. 5. The Watershed District, at its discretion, may file notification of a violation or threatened violation of any part of these rules by any person, governmental subdivision, or governmental agency with the Pollution Control Agency, the Department of Natural Resources, Board of Soil and Water Resources, or the Minnesota Department of Health as appropriate; however, such notification shall not preclude any right of the Watershed District to prevent or continue to prevent any act not allowed or any action required to be performed by these rules, nor shall it prevent simultaneous actions to be taken against any violator by the Watershed District, the Department of Natural Resources, the Minnesota Pollution Control Agency, the Minnesota Department of Health, the courts, or any other person or authority having jurisdictional powers or interest to take such action.

Section 6.0 Adoption or Amendment

These Rules of the Yellow Medicine River Watershed District shall be adopted or amended by a majority vote of the Board of Managers, after public notice and hearing. Rules must be signed by the secretary of the Board of Managers and recorded in the Board of Managers official minute book, pursuant to Minnesota Statutes 103D.341, Subdivision 2.

Section 7.0 Variances

7.01 Variances Authorized.

The Board of Managers may hear requests for variances from the literal provisions of these rules in instances where their strict enforcement would cause undue hardship because of circumstances unique to the property under consideration and having made public notice of such hearings. The Board of Managers may grant variances where it is demonstrated that such action will be in keeping with the spirit and intent of these rules.

7.02 Standard.

In order to grant a variance, the Board of Managers shall determine that the special conditions which apply to the structure or land in question do not apply generally to other land or structures in the district, that, in granting of such variance, will not merely serve as a convenience to the applicant and that the variance will not impair or be contrary to the intent of these rules.

7.03 Term.

A variance shall become void after one year after it is granted, unless used.

7.04 Violation.

A violation of any condition set forth in a variance shall be a violation of the district rules. The Board of Managers shall ask the variance applicants to appear in front of the Board to show cause why the variance should not be terminated.

Section 8.0 Buffer Law Implementation

8.01 Policy

It is the policy of the Board of Managers to:

- (a) Provide public drainage system ditches with vegetated buffers and water quality practices to achieve the following purposes:
 - (1) Protect state water resources from erosion and runoff pollution;
 - (2) Stabilize soils, and banks.
- (b) Coordinate closely with the District's landowners, soil and water conservation districts and counties, and utilize local knowledge and data, to achieve the stated purposes in a collaborative, effective and cost- efficient manner.
- (c) Integrate District authorities under Minnesota Statutes §§103D.341, 103E.021, and 103F.48 to provide for clear procedures to achieve the purposes of the rule.

- (d) The District will implement and enforce buffers through the use of Drainage Law (Minnesota Statutes §§103E.021 and 103E.351) and when that cannot be accomplished through the use of Administrative Penalty Order (APO) powers granted through Minnesota Statute §103F.48.

8.02 Data sharing/management

Subdivision 1. The District may enter into arrangements with an SWCD, a county, the BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this rule.

Subd. 2. The District will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

8.03 Vegetated Buffer Requirement

Subdivision. 1. Except as subsection 8.03 Subd. 5 may apply, a landowner must maintain a buffer on land that is adjacent to a public drainage system ditch identified and mapped on the buffer protection map established and maintained by the Commissioner pursuant to the buffer law.

Subd. 2. The buffer must be of a 16.5-foot minimum width. This rule does not apply to the portion of public drainage systems consisting of tile.

Subd. 3. The buffer is measured from the top or crown of bank. Where there is no defined bank, measurement will be from the normal water level. The District will determine normal water level in accordance with BWSR guidance. The District will determine top or crown of bank in the same manner as for measuring the perennially vegetated strip under Minnesota Statutes §103E.021.

Subd. 4. The requirement of section 8.03 applies to all public drainage ditches within the legal boundary for which the District is the drainage authority.

Subd. 5. The requirement of section 8.03 does not apply to land that is:

- Enrolled in the federal Conservation Reserve Program;
- Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach and watercraft access areas, provided the area in such use is limited to what is permitted under shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;
- Used as the site of a water-oriented structure in conformance with

shoreland standards or, if no specific standard is prescribed, what is reasonably necessary;

- Covered by a road, trail, building or other structure;
- Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under Minnesota Rules, chapter 7090, and the adjacent waterbody is provided riparian protection;
- Part of a water-inundation cropping system; or
- In a temporary non-vegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state or local government unit.

8.04 Drainage System Acquisition and Compensation for Buffer

Subdivision. 1. In accordance with Minnesota Statutes §103F.48, subdivision 10(b), a landowner owning land within the benefited area of and adjacent to a public drainage ditch may request that the District, as the drainage authority, acquire and provide compensation for the buffer strip required under this rule.

Subd. 2. The request may be made to use Minnesota Statutes §103E.021, subdivision 6, or by petition pursuant to Minnesota Statutes §103E.715, subdivision 1.

Subd. 3. The decision on the request is within the judgment and discretion of the District, unless the request concerns a buffer strip mandated by Minnesota Statutes §103E.021.

Subd. 4. If the request is granted or the petition proceeds, the requirements of the buffer strip and the compensation to be paid for its incorporation into the drainage system will be determined in accordance with the statutes referenced in 8.04 subd. 2 and associated procedures. When the order establishing or incorporating the buffer strip is final, the buffer strip will become a part of the drainage system and thereafter managed by the District in accordance with the drainage code.

Subd. 5. On a public drainage ditch that also is a public water subject to a 50-foot average buffer, the drainage system will be required to acquire only the first 16.5 feet of the buffer.

Subd. 6. The District, on its own initiative pursuant to Minnesota Statutes §§103F.48 and 103E.021, may acquire and provide compensation for buffer strips required under this

rule on individual or multiple properties along a public drainage system. The Board of Managers findings and order will be delivered or transmitted to the landowner.

Subd. 7. This section does not displace, the terms of Minnesota Statutes chapter 103E requiring or providing for drainage system establishment and acquisition of vegetated buffer strips along public ditches.

8.05 Action for Noncompliance

Subdivision. 1. When the District observes potential noncompliance or receives a third-party complaint from a private individual or entity, or from another public agency (such as the SWCD), it will determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a notification of noncompliance to the District. If the SWCD does not transmit such a notification, the District will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48, but may pursue such an action under the authority of Minnesota Statutes §§103E.021 and 103D.341 and section 8.06 of this rule.

Subd. 2. On receipt of an SWCD notification of noncompliance, or if acting solely under authority of Minnesota Statutes §§103E.021 or 103D.341, the District will determine first whether sufficient public drainage system easement exists to establish the required vegetative buffer. If a sufficient easement does not exist, the District will attempt to acquire the necessary easements through incremental buffer establishment provided in §103E.021, subd. 6 or through a redetermination of benefits provided in Minnesota Statutes §103E.351 to establish the required buffers. The establishment of the required buffers will occur within 12 months of the determination that inadequate easement exists, and no more than 18 months from the receipt of a SWCD notification of noncompliance or the Watershed District decision to establish the required buffers.

Subd. 3. If the District is unable to acquire the necessary easements through incremental buffer establishment provided in §103E.021, subd. 6 or through a redetermination of benefits, or if sufficient easement does exist and an established buffer has been adversely altered, the District will issue a corrective action list and practical schedule for compliance to the landowner or responsible party. The District may inspect the property and will consult with the SWCD, review available information and exercise its technical judgment to determine appropriate and sufficient corrective action and a practical schedule for such action. The District will maintain a record establishing the basis for the corrective action that it requires.

Subd. 3.1. The District will issue the corrective action list and schedule to the landowner of record. The landowner may be the subject of enforcement liabilities under sections 8.06, subdivisions 1 and 2. The District may deliver or transmit the list and schedule by any means reasonably determined to reach the landowner, and will document receipt. However, a failure to document receipt will not preclude the District from demonstrating receipt or knowledge in an enforcement proceeding under section 8.06.

Subd. 3.2. The corrective action list and schedule will identify the parcel of record to which it pertains and the portion of that parcel that is alleged to be noncompliant. It will describe corrective actions to be taken, a schedule of intermediate or final dates for correction, a compliance standard against which it will judge the corrective action, and a statement that failure to respond to this list and schedule will result in an enforcement action. The District will provide a copy of the list and schedule to the BWSR.

Subd. 3.3. At any time, a landowner or responsible party may supply information in support of a request to modify a corrective action or the schedule for its performance. On the basis of any such submittal or at its own discretion, the District may modify the corrective action list or schedule, and deliver or transmit the modified list or may advise the landowner in writing that it is not pursuing further compliance action.

Subd. 3.4. At any time after the District has issued the list and schedule, a landowner, or authorized agent or operator of a landowner or responsible party, may request that the SWCD issue a validation of compliance with respect to property for which the list and schedule has been issued. On District receipt of the validation: (a) the list and schedule will be deemed withdrawn for the purpose of section 8.06 subsection 2, and the subject property will not be subject to enforcement under that section; and (b) the subject property will not be subject to enforcement under 8.05 subsection 3.

Subd. 3.5. A corrective action list and schedule is not considered a final decision subject to appeal. An objection to a finding of noncompliance, or to any specified corrective action or its schedule, is reserved to the landowner or responsible party and may be addressed in an enforcement proceeding under section 8.06.

8.06 Enforcement

Subdivision. 1. Under authority of Minnesota Statutes §§103E.021, 103D.545, and 103D.551, the District may seek remedies for noncompliance with section 8.03 against any landowner or responsible party including but not limited to: (a)

reimbursement of District compliance costs under Minnesota Statutes §§103D.345 and 103E.021 and/or an escrow for same; (b) administrative compliance order; (c) district court remedy including injunction, restoration or abatement order, authorization for District entry and/or order for cost recovery; and (d) referral to county attorney for criminal misdemeanor prosecution..

Subd. 2. In instances where existing vegetation on the ditch buffer easement has been adversely altered and has not been restored, the District may collect compliance expenses in accordance with Minnesota Statutes §§103E.021 from a landowner for noncompliance with the corrective action list and schedule, as provided under section 8.05 subd. 3.1 and 3.2. The District will restore any adversely altered buffer and charge the landowner for the cost of the restoration if the landowner does not complete the requirements of the corrective action list and schedule.

Subd. 3. In instances where a ditch buffer easement area cannot be established in a timely manner, the District may issue an administrative order imposing a monetary penalty against a landowner or responsible party for noncompliance with the corrective action list and schedule, as provided under section 8.06 subd. 3.1 and 3.2. The penalty will continue to accrue until the noncompliance is corrected as provided in the corrective action list and schedule.

Subd. 3.1. The penalty for a landowner on a single parcel that previously has not received an administrative penalty order issued by the District shall be:

- (a) \$0 for 11 months after issuance of the corrective action list and schedule;
- (b) \$200 per parcel per month for the first six (6) months (180 days) following the time period in (a); and
- (c) \$500 per parcel per month after six (6) months (180 days) following the time period in (b).

Subd. 3.2 The penalty for a landowner on a single parcel that previously has received an administrative penalty order issued by the District shall be:

- (a) \$200 per parcel per day for 180 days after issuance of the corrective action list and schedule; and
- (b) \$500 per parcel per day for after 180 days following the time period in (a).

Subd. 4. The administrative order will state:

- i. The facts constituting a violation of the buffer requirements;
- ii. The statute and/or rule that has been violated;
- iii. Prior efforts to work with the landowner to resolve the violation;

- iv. For an administrative penalty order, the amount of the penalty to be imposed, the date the penalty will begin to accrue, and the date when payment of the penalty is due; and
- v. The right of the landowner or responsible party to appeal the order.

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

Subd. 5. An administrative order under section 8.06 subdivision 1 or 3 will be issued after a compliance hearing before the District Board of Managers. The landowner and any other responsible parties will receive written notice at least two weeks in advance of the hearing with a statement of the facts alleged to constitute noncompliance and a copy or link to the written record on which District staff intends to rely, which may be supplemented at the hearing. A landowner or responsible party may be represented by counsel, may present and question witnesses, and may present evidence and testimony to the Board of Managers. The District will make a verbatim record of the hearing.

Subd. 6. After a hearing noticed and held for consideration of an administrative penalty or other administrative order, the Board of Managers may issue findings and an order imposing any authorized remedy or remedies.

Subd. 6.1. The amount of an administrative penalty will be based on considerations including the extent, gravity and willfulness of the noncompliance; its economic benefit to the landowner or responsible party; the extent of the landowner or responsible party's diligence in addressing it; any noncompliance history; the public costs incurred to address the noncompliance; and other factors as justice may require.

Subd. 6.2 The Board of Managers findings and order will be delivered or transmitted to the landowner and other responsible parties. An administrative penalty order may be appealed to the BWSR in accordance with Minnesota Statutes §103F.48, subdivision 9, and will become final as provided therein. The District may enforce the order in accordance with Minnesota Statutes §116.072, subdivision 9. Other remedies imposed by administrative order may be appealed in accordance with Minnesota Statutes §103D.537.

Subd. 6.3. The Board of Managers may forgive an administrative penalty, or any part thereof, on the basis of diligent correction of noncompliance following issuance of the findings and order and such other factors as the Board finds relevant.

Subd. 7. Absent a timely appeal pursuant to section 8.06 subd. 6.2, an administrative penalty is due and payable to the District as specified in the administrative penalty order.

Subd. 8. Nothing within this rule diminishes or otherwise alters the District's authority under Minnesota Statutes, chapter 103E with respect to any public drainage system for which it is the drainage authority, or any buffer strip that is an element of that system.

Section 9.0 Effect of Rule

Subdivision 1. Rules and Amendments of the Rules of the Yellow Medicine River Watershed District previously approved by the Board of Managers are hereby rescinded.

Subd. 2. The new Rules of the Yellow Medicine River Watershed District shall be effective upon adoption by majority vote of the Managers, after public notice and hearing and publication of the adopted Rules in at least one legal newspaper published in Lincoln, Lyon and Yellow Medicine Counties and generally circulated in the Watershed District.

Subd. 3. Upon adoption, the Managers must file the adopted Rules with the County Recorder of each county affected by the Watershed District and to the governing body of each municipality affected by the Watershed District.

Subd. 4. These Rules Adopted according to Minnesota Statutes 103D.341 are hereby effective this 1st day of January, 2019.

Subd. 5. If any section, provision or portion of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the rule is not affected thereby.

Subd. 6. Any provision of this rule, and any amendment to it, that concerns District authority under Minnesota Statutes §103F.48 is not effective until an adequacy determination has been issued by the BWSR. Authority exercised under Minnesota Statutes chapter 103D and 103E does not require a BWSR adequacy determination.

John Boulton

John Boulton, Secretary