



Procedure 9: BWSR's Review of County and Watershed District Buffer Rules, Ordinances and Official Controls

Buffer Law Implementation

June 28, 2017

This document was adopted by the Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. §103F.48, subd. 1(j), subd. 7(b) and subd. 7(c) to describe how BWSR will review the buffer enforcement rules, ordinances, and other official controls of counties and watershed districts that elect to exercise their jurisdiction for the enforcement of the riparian protection and water quality practices requirements of Minn. Stat. §103F.48. It is a guide; not a rule. It is not a statement of general applicability and future effect. It is not designed to amend statute. Statutes are subject to change and if the language of this procedure differs from statute, the statute controls. In addition, users of the document are encouraged to obtain legal advice of an attorney regarding their specific application of Minn. Stat. §103F.48 and their own legal authorities.

I. Procedure

County and watershed district buffer rules, ordinances and official controls will be reviewed by BWSR as provided below:

1. In accordance with Minn. Stat. §103F.48, subd. 1(j) and subd. 7(c) BWSR staff will review the enforcement and appeals procedures of county and watershed district rules, ordinances or other official controls to determine if they contain adequate provisions to ensure compliance and effective enforcement of Minn. Stat. §103F.48. If the county or watershed district rules, ordinances or other official controls propose using administrative penalty order (APO) authority pursuant to Minn. Stat. §103B.101 Subd. 12a as the enforcement mechanism, BWSR review will also evaluate whether the county or watershed district APO plan is consistent with the plan adopted by BWSR. The adequacy and/or consistency review for rules, ordinances or other official controls received by BWSR by September 1, 2017 will be completed by November 1, 2017. The adequacy and/or consistency review for rules, ordinances and other official controls received after September 1, 2017 will be completed within 60 days of receipt. BWSR will send the adequacy and/or consistency determination to the county or watershed district electronically.
2. BWSR staff will review county and watershed district rules, ordinances and other official controls to ensure that the state mandated requirements of Minn. Stat. §103F.48 are met as follows:
 - a. Counties and watershed districts that elect to exercise their jurisdiction, must submit the following information to BWSR, at least 60 days prior to the effective date of the rule, ordinance or other official control which includes:
 - i. The resolution or other formal decision of the county or watershed district governing body documenting adoption of the rule, ordinance or other official control;
 - ii. The rule, ordinance or other official control adopted by the county or watershed district governing body; and
 - iii. If applicable, a document that describes how the rule, ordinance or other official control departs from the model ordinance or rule developed by BWSR.

- b. Failure to provide the required information will result in a determination by BWSR that the rule, ordinance or other official control does not contain adequate provisions to ensure compliance and effective enforcement of Minn. Stat. §103F.48.
 - c. A county or watershed district may vary the procedures outlined in the APO Plan pertaining to the penalty amount and interval of recurrence to the extent it is consistent with Part A of BWSR's APO Plan. The submission of an APO Plan with changes from the BWSR APO Plan should include adequate justification and be based on considerations that include the extent, gravity and willfulness of the noncompliance.
 - d. Any change from a prior adopted rule, ordinance or other official control must be submitted to BWSR at least 60 days prior to the effective date of the change.
3. The option of a county or watershed district to modify or delegate a previous election of jurisdiction and the adoption of a rule, ordinance or other official control will follow the same review as provided above.

II. Background

A county or watershed district may (or may not) elect to exercise its jurisdiction to enforce the water resources riparian protection requirements. Pursuant to Minn. Stat. §103F.48, subd. 1(j) and subd. 7(c) a county or watershed district must submit their rule, ordinance or other official control to BWSR to comply with the legislative requirements under Minn. Stat. §103F.48 regarding BWSR's determination on the adequacy and consistency of the rule, ordinance or other official control.

BWSR will follow a consistent process when reviewing an ordinance, rule, or other local control for adequacy with Minn. Stat. §103F.48 and consistency with the APO Plan adopted by BWSR. A county or watershed district must allow at least 60 days for BWSR review and to determine adequacy prior to the effective date of the rule, ordinance or other official control. Determinations will be based, in part, on primacy as defined in BWSR's Procedure 8: Election of Jurisdiction and the ability to effectively carry out the compliance provisions.

BWSR is required under Minn. Stat. §103F.48, subd. 1(j) to determine that the county or watershed district rule, ordinance or other official control has adequate procedures for APO issuance, enforcement and appeals. In addition, BWSR has responsibility to ensure that a county or watershed district APO Plan is consistent with the APO Plan adopted by BWSR pursuant to Minn. Stat. §103F.48, subd. 7(c).

Counties are encouraged to keep their buffer ordinance and shoreland ordinance as separate, stand-alone chapters. However, if a local shoreland ordinance is being amended for buffer law implementation, any changes should use the Minnesota Department of Natural Resources' (DNR) model language and must be approved by the DNR. The county or watershed district should coordinate DNR review concurrently with BWSR review.

BWSR believes that the compliance provisions of the water resources riparian protection requirements of Minn. Stat. §103F.48 will work most effectively through local implementation at the county or watershed district level.

A county or watershed district that elects jurisdiction under the water resources riparian protection requirements of Minn. Stat. §103F.48 has the option to elect or discontinue jurisdiction by providing written notice to the BWSR at least 60 days prior to the effective date of the change in election. Additional details on changes to the election of jurisdiction are found in Procedure 8: Election of Jurisdiction.

Local Government Implementation and Enforcement Options:

Each county and watershed district should consult with their legal counsel in preparing and adopting rules, ordinances or other official controls for local enforcement of the water resources riparian protection requirements of Minn. Stat. §103F.48.

Counties and watershed districts that decide to elect jurisdiction have several enforcement options:

- a. Adopt BWSR's Model County Buffer Ordinance or Rule with no or only nonsubstantive changes;
- b. Adopt BWSR's Model County Buffer Ordinance or Rule with revisions that allow for local priorities that are at least as restrictive as those in Minn. Stat. §103F.48;
- c. Incorporate the water resources riparian protection requirements of Minn. Stat. §103F.48 into an existing local ordinance, rule or other official control;
- d. Use the APO authority granted in Minn. Stat. §103B.101, subd. 12a and adopt a standalone local APO plan as an official control or with one of the above options; or
- e. Implement other options that are available to counties and watershed districts in statute.

Program Need:

Counties and watershed districts need assurance on procedural review of rule, ordinance, or other official controls that will be used to carry out the compliance provisions of the water resources riparian protection requirements in Minn. Stat. §103F.48. This includes:

- Providing clear, consistent review standards.
- Identifying a timeline and level of review.
- Determining if the rule, ordinance, or other official control includes adequate procedures for APO, enforcement, and appeals.
- Identifying potential consequences for a county or watershed district's failure to implement and enforce their rule, ordinance, or other official control once adopted per Minn. Stat. §103F.48, subd. 8.

III. Statutory Basis

- Minn. Stat. §103F.48, subd.6 Local implementation and assistance
- Minn. Stat. §103F.48, subd. 7 Corrective Actions
- Minn. Stat. §103F.48, subd. 8 Funding subject to withholding
- Minn. Stat. §103F.48, subd.9 Appeals and validations and penalty orders
- Minn. Stat. §103B.101, subd 12a Authority to issue penalty orders
- Minn. Stat. §103B.102, subd 4. Corrective actions

IV. Compliance Determinations

Local units of government are encouraged to consult with BWSR staff throughout the process to assist in the development of local enforcement provisions consistent with the water resources riparian protection requirements of Minn. Stat. §103F.48.

All decisions will be based on a standard of review that ensures equitable compliance provisions are in place. If the initial determination is that a county or watershed district lacks adequate controls to ensure

compliance, BWSR staff will assist that local unit of government in addressing the necessary measures to change the initial determination and bring about compliance.

V. Enforcement and Penalty Procedures for Noncompliance

BWSR has the statutory responsibility to determine whether local government units that elect jurisdiction have rules, ordinances or other official controls that contain adequate provisions to ensure compliance and effective enforcement of the Riparian Protection and Water Quality Practices of Minn. Stat. §103F.48. If a county or watershed district exercising jurisdiction fails to impose their enforcement authority regarding implementation of those requirements, BWSR will notify the local government unit in writing of its concerns and the required corrective action that needs to take place. If after 60 days, the local government unit fails to correct the problem, BWSR may proceed to withhold funding as provided in Minn. Stat. §103F.48, subd. 8 and Procedure 7: Failure to Implement and could take other appropriate legal action to ensure compliance.