



# Minnesota Buffer Program Implementation

## Buffer Enforcement and Compliance

April 4, 2016

### Overview

The Minnesota Board of Water and Soil Resources (BWSR) is requesting public comment and information on the development of orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems.

The Buffer Program was enacted in 2015 and includes the following provisions:

- Requires landowners to establish and maintain buffers adjacent to public waters and public drainage ditches;
- Requires soil and water conservation districts to identify other waters for inclusion in local water plans;
- Exempts certain land uses and areas from the buffer requirement;
- Allows landowners to meet the buffer requirements through other conservation practices that will protect water quality;
- Requires soil and water conservation districts to assist landowners in complying; and
- Provides for enforcement by counties, watershed districts or BWSR.

BWSR will be considering orders, guidance and procedures relating to:

- 1) Technical requirements for implementation of the buffer requirement;
- 2) Administrative procedures, including for alternative water quality practices, validations of compliance, exemptions, and initial implementation waivers;
- 3) The identification of local water resources riparian protections (other waters), including criteria and processes for use by soil and water conservation districts; and
- 4) Compliance and enforcement.

### Statutory Overview

Minnesota Statutes 103F.48 provide for the enforcement of the buffer requirement. Authorities relating to enforcement and landowner compliance are shown below:

- SWCD: Issue a validation of compliance to a landowner when requested. (Subd. 3(d))
- SWCD: Track landowner progress towards compliance. (Subd. 6)
- SWCD: Notify the county or watershed district with jurisdiction over the noncompliant site when it determines a landowner is not in compliance. (Subd. 7a)
- County or Watershed District: The county or watershed district with jurisdiction must provide the landowner that has been determined to be out of compliance by the SWCD with a list of corrective actions and a practical timeline to come into compliance. (Subd. 7a)

- County or Watershed District: Must adopt an administrative penalty order (APO) plan before using the authority provided in Minn. Stat. 103B.101, Subd 12a to enforce the buffer requirement. (Subd. 7b)
- BWSR: May use the APO authority provided in Minn. Stat. 103B.101, Subd 12a to enforce the buffer requirement when the county or watershed district have not adopted an APO plan. (Subd. 7b)
- BWSR: Must receive and decide on appeals of SWCD validations or APO's issued by a county, watershed district or BWSR. (Subd. 9)
- BWSR: May withhold funding from an SWCD, watershed district or county that fails to implement 103F.48. (Subd. 8) See BWSR Board Policy adopted December 16, 2015: <http://bwsr.state.mn.us/buffers/assets/failure-to-implement-policy.pdf>

## Implementation Options and Procedures

BWSR has identified two options for efficiently and consistently carrying out compliance and enforcement responsibilities:

- 1. Local Enforcement Option:** *Counties/Watershed Districts* issue corrective action notices that are enforced through locally adopted APO plans or county ordinance and watershed district rule authorities. County and watershed district APO plans are subject to BWSR approval prior to local adoption. Under this option, all or a portion of the work could be delegated to another local unit of government.
- 2. State Enforcement Option:** There are two routes to follow for this option:
  - A. *Counties/Watershed Districts* issue corrective action notices that are enforced through a *BWSR* adopted administrative penalty order plan.
  - B. *BWSR* issues corrective action notices that are enforced through a *BWSR* adopted administrative penalty order plan.

These options need not be used exclusively on a statewide basis. This approach allows counties and watershed districts to choose whether to enforce the buffer law or not. BWSR would accept compliance and enforcement responsibilities in those counties and/or watershed districts that elect to defer to state enforcement.

To ensure a statewide compliance and enforcement system is in place by the first compliance deadline, the following processes must be completed by:

- *counties* by November 1, 2017 relating to buffers adjacent to public waters; and
- *counties and watershed districts* by November 1, 2018 for buffers adjacent to public drainage ditches.

Spring, 2016: Counties, watershed districts, SWCDs and drainage authorities are encouraged to meet following the preparation of the preliminary Buffer Protection Maps to validate them, and to discuss implementation of the buffer law including compliance and enforcement responsibilities. This implementation discussion should include compliance and enforcement to ensure a coordinated approach.

January 25, 2017: BWSR adopts its enforcement order and APO Plan.

**Note:** BWSR will develop its enforcement order and APO plan through Board Committees and a transparent process of engagement with local governments and stakeholders. This plan and order will include procedures to carry out the full suite of compliance and enforcement responsibilities from receipt of the notice from an SWCD that a landowner is not in compliance through the completion of any appeal following issuance of an APO. The plan will include procedures for BWSR receipt and acceptance of county and watershed district compliance and enforcement elections and approval of county and watershed district APO plans. This plan and order would

only be put into effect in counties and watershed districts that elect to not enforce the buffer law as discussed below.

March 31, 2017: All counties and watershed districts must notify BWSR of their intention to:

- (1) adopt an APO plan that is subject to approval by BWSR;
- (2) use existing county ordinance and watershed district rule authorities, or;
- (3) defer to state enforcement.

In providing a statement of intent, counties and watershed districts are encouraged to coordinate to ensure consistency and minimize landowner uncertainty.

**Note:** BWSR needs to know the intentions of counties and watershed districts by this date to ensure the required capacity is in place to carry out any required enforcement duties on November 1, 2017 and to ensure that compliance and enforcement responsibilities and procedures can be communicated to local governments and landowners.

BWSR will institute a process by which the governing body of every county and watershed district must provide documentation of their intent to:

- (1a) adopt an APO plan by November 1, 2017 for enforcement relating to buffers adjacent to public waters and/or
- (1b) by November 1, 2018 for enforcement relating to buffers adjacent to public drainage ditches; or
- (2) use existing ordinance and rule authorities to ensure landowner compliance, including completion of any necessary official control processes by November 1, 2017 for county ordinances relating to shoreland management or November 1, 2018 for county ordinances and watershed district rules relating to public drainage ditches; or
- (3) defer to enforcement by BWSR.

March 31, 2018: Counties and watershed districts may make adjustments or changes to the notice of intent relating to public drainage ditch compliance and enforcement provided to BWSR prior to March 31, 2017.

November 1, 2017: All counties that have elected to do either 1a or 2 above, must have adopted and implemented a BWSR approved APO plan by November 1, 2017 or November 1, 2018 or has enacted any necessary amendments to county ordinances relating to shoreland management and provide appropriate documentation to BWSR of this action.

November 1, 2018: All counties and watershed districts, that have elected to do either 1b or 2 above, must have adopted and implemented a BWSR approved APO plan by November 1, 2018 or has enacted any necessary amendments to county ordinances and watershed district rules relating to buffer requirements for public drainage ditches and provide appropriate documentation to BWSR of this action.

## Implementation Timeline

BWSR has established an implementation timeline for the development of the orders, guidance and procedures to support the implementation of Minnesota Statutes 103F.48, relating to water resources riparian protection requirements on public waters and public drainage systems. This schedule is generally:

<u>March 23, 2016</u>	BWSR Board Review Implementation Plan and Authorize Seeking Request for Information
<u>June 22, 2016</u>	BWSR Board Approve Preliminary Board Orders/Guidance

August 25, 2016

BWSR Board Approve Final Board Orders/Guidance

However, as outlined above, the schedule for compliance and enforcement does not follow this implementation schedule which provides for BWSR adoption of an enforcement order and APO Plan by January 25, 2017.

## Specific Questions

While all comments relating to buffer compliance and enforcement are welcome and encouraged, the BWSR is specifically requesting comment on the following questions:

*Question 1:* What models or enforcement structures should be evaluated and considered for the Buffer Law?

*Question 2:* Will the options presented below effectively address any circumstances of noncompliance?

*Question 3:* What potential problems might the options discussed here present to BWSR, local governments and landowners, and what actions should be considered to address these problems?

*Question 4:* What other options, considerations and proposals should be evaluated in developing an effective means to ensure compliance and enforcement of the buffer requirement of Minn. Stat. 103F.48?

## Public Comment

Information and comments will be accepted until 4:30 p.m. on May 4, 2016. Comments may be submitted via email to [buffers.bwsr@state.mn.us](mailto:buffers.bwsr@state.mn.us) or by U.S. mail to:

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