

A RULE TO CREATE AND ENACT THE RIPARIAN PROTECTION AND WATER QUALITY PRACTICES RULE TO THE 2009 REVISED RULES OF THE BOIS DE SIOUX WATERSHED DISTRICT, RELATING TO PERMANENT VEGETATIVE BUFFER STRIPS.

BE IT ORDAINED BY THE BOIS DE SIOUX WATERSHED DISTRICT BOARD OF MANAGERS:

SECTION 1. Section 9 of the 2009 Revised Rules of the Bois de Sioux Watershed

District, is hereby created and enacted to read as follows:

**Section 9. Riparian Protection and Water Quality Practices – “Buffer Rule”.**

A. STATUTORY AUTHORIZATION AND PURPOSE

- (1) Statutory Authorization. The riparian protection and water quality practices defined under this Rule (this “Rule”) are adopted pursuant to the authorization and policies contained in Minnesota Statutes Chapter 103D and Minnesota Statutes § 103F.48 (the “Buffer Law”).
- (2) Purpose. It is the purpose and intent of the Bois de Sioux Watershed District to establish riparian buffers and water quality practices to:
  - (a) Protect state water resources from erosion and runoff pollution;
  - (b) Stabilize soils, shore, and banks; and
  - (c) Protect or provide riparian corridors.

B. DEFINITIONS AND GENERAL PROVISIONS

- (1) Definitions. Unless specifically defined below, words or phrases used in this Rule shall be interpreted to give them the same meaning they have in common usage and to give this Rule its most reasonable application. For the purpose of this Rule, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.
  - (a) “BDSWD” means the Bois de Sioux Watershed District.
  - (b) “Board” means the Board of Water and Soil Resources.
  - (c) “Buffer” means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds, adjacent to all bodies of water within the state and that protects the water resources of the state from runoff pollution; stabilizes soils, shores, and banks; and protects or provides riparian corridors.

- (d) “Buffer protection map” means buffer maps established and maintained by the Commissioner of the Department of Natural Resources.
  - (e) “BWSR” means the Board of Water and Soil Resources.
  - (f) “Commissioner” means the Commissioner of the Department of Natural Resources.
  - (g) “Cultivation farming” means farming practices that disturb root or soil structure or that impair the viability of perennial vegetation due to cutting or harvesting near the soil surface.
  - (h) “Drainage Authority” means the local watershed district or joint county drainage authority having jurisdiction over a drainage system or project.
  - (i) “Drainage system” means a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority. Drainage system includes the improvement of a natural waterway used in the construction of a drainage system and any part of a flood control plan proposed by the United States or its agencies in the drainage system.
  - (j) “Executive Director” means the Executive Director of the Board of Water and Soil Resources.
  - (k) “Landowner” means the holder of 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.
  - (l) “Parcel” means a unit of real property that has been given a tax identification number maintained by the respective county.
  - (m) “SWCD” means Soil and Water Conservation District.
- (2) Coordination and Implementation.
- (a) The respective SWCD must assist landowners with implementation of the water resource riparian protection requirements established under the Buffer Law pursuant to Minn. Stat. § 103F.48, Subd. 6. Assistance includes planning, technical assistance, implementation of approved alternative practices, and tracking progress toward compliance with the requirements.

- (b) The Commissioner or the Board must provide sufficient funding to the respective SWCD to implement the provisions of Minn. Stat. § 103F.48.
  - (c) The BDSWD will coordinate the implementation and enforcement of this Rule with the management of public drainage systems under applicable rules, statutes, policies, and jurisdiction of the BDSWD. The BDSWD will provide efficient and effective direction to landowners and protection of surface water quality and related land resources upon request.
- (3) Data Sharing - Management. The BDSWD may enter into agreements with any SWCD, BWSR, or other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this Rule.
  - (4) Delegation of Enforcement. Nothing herein prevents the BDSWD from entering into an agreement with any other entity authorized by law to enforce buffer requirements, within its jurisdiction according to the Buffer Law or other properly adopted enforcement rule.
  - (5) Drainage System Acquisition and Compensation for Buffer. Nothing herein prevents the acquisition and compensation of buffers on public drainage systems pursuant to law.
  - (6) Jurisdiction. The provisions of this Rule apply to public drainage systems shown on the buffer protection map for which BDSWD is the drainage authority.

C. BUFFER REQUIREMENTS.

- (1) Buffer Width. Except as otherwise stated herein, a landowner owning property adjacent to a public drainage system identified on the buffer protection map must establish and maintain a buffer width of at least sixteen and one half feet (16.5').
- (2) Measurement. In any proceeding to establish, construct, improve, or do any work affecting a public drainage system under any law that appoints viewers to assess benefits and damages, the buffer is measured outward from the top edge of the constructed channel resulting from the proceeding, or to the crown of the leveled spoil bank, whichever is the greater. In any action by the BDSWD that results only in a redetermination of benefits and damages, the required width shall be sixteen and one half feet (16.5').
- (3) Use of Buffer Area. Except as otherwise stated herein, a buffer may not be put to any use which would remove or prevent the permanent growth of perennial vegetation including, but not limited to, cultivation farming. Harvesting the vegetation from the permanent buffer in a manner not harmful to the vegetation or the drainage system is the privilege of the fee owner or assigns.

- (4) Exemptions. Land adjacent to waters subject to Minn. Stat. § 103F.48, Subd. 3 is exempt from the water resource protection requirements under Minn. Stat. § 103F.48, Subd. 3, if it is:
- (a) Enrolled in the federal Conservation Reserve Program;
  - (b) Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented structures as provided in the shoreland model standards and criteria adopted pursuant to Minn. Stat. § 103F.211 or as provided for in an approved local government shoreland ordinance;
  - (c) Covered by a road, trail, building, or other structures;
  - (d) Part of a water-inundation cropping system;
  - (e) In a temporary nonvegetated condition due to drainage tile installation and maintenance, alfalfa, or other perennial crop or plant seeding, or construction or conservation projects authorized by a federal, state, or local government unit; or
  - (f) Regulated by a national pollutant discharge elimination system/state disposal system (“NPDES/SDS”) permit under Minnesota Rules, Chapter 7090, and provides water resources riparian protection, in any of the following categories:
    - (i) Municipal separate storm sewer system (“MS4”);
    - (ii) Construction storm water (“CSW”); or
    - (iii) Industrial storm water (“ISW”).
- (5) Alternative Practices. A landowner practicing cultivation farming may demonstrate compliance with this Rule by establishing and maintaining an alternative riparian water quality practice, or combination of structural, vegetative, and management practices which provide water quality protection comparable to the water quality protection provided by a required buffer. Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource. The adequacy of any alternative practice allowed under this section is based on:
- (a) Natural Resources Conservation Service (“NRCS”) Field Office Technical Guide (“FOTG”);
  - (b) Practices based on local conditions approved by the SWCD that are consistent with the NRCS FOTG; or

- (c) Other local practices adopted by BWSR.

D. COMPLIANCE.

- (1) Compliance Determinations. Compliance with the buffer requirement will be determined on a parcel by parcel basis. The compliance status of each individual parcel will be determined independently.
- (2) Action for Noncompliance. When the SWCD identifies potential noncompliance with the buffer requirement or receives a third-party complaint from a private individual or entity, or from another public agency, it will consult with the BDSWD to determine the appropriate course of action to document compliance status. This may include communication with the landowner, inspection, or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of the evidence gathered in this process, the SWCD may issue a Notification of Noncompliance to the BDSWD.
- (3) Corrective Actions.
  - (a) If, pursuant to Minn. Stat. § 103F.48, Subd. 7, the SWCD determines a landowner is not in compliance with this Rule, the SWCD must notify the BDSWD and the Board. The BDSWD must then provide the landowner with a list of corrective actions needed to come into compliance and a practical timeline to meet the requirements of this Rule. The BDSWD must provide a copy of the Corrective Action Notice to the Board.
  - (b) If the BDSWD or the Board determines that sufficient steps have been taken to fully resolve noncompliance, all or part of the penalty may be forgiven.
  - (c) A landowner, agent, or operator may appeal the decision to the respective district court as provided under the Minnesota Rules of Court.
  - (d) A corrective action is not required for conditions resulting from a flood or other act of nature.
  - (e) A landowner, agent, or operator of a landowner may not remove or willfully degrade a riparian buffer or water quality practice, wholly or partially, unless the agent or operator has obtained a signed statement from the property owner stating that the permission for the work has been granted by the unit of government authorized to approve the work in this Rule or that a buffer or water quality practice is not required as validated by the SWCD. Removal or willful degradation of a riparian buffer or water quality practice, wholly or partially, by an agent or operator is a separate and independent offense and may be subject to the corrective actions and penalties in this Rule.

- (4) Service of Notice. The BDSWD shall serve the Corrective Action Notice by one (1) of the following methods:
  - (a) Personal service; or
  - (b) Certified mail, return receipt requested. A copy of the notice will also be provided to the respective SWCD and BWSR.

Refusal of the landowner to accept service is not a defense to lack of notice.

- (5) Proof of Compliance by Landowner. At any time during the process set forth above, the landowner may provide documentation of compliance to the BDSWD. The BDSWD and SWCD may then review the documentation, inspect the buffer, and evaluate alternative practices to determine if the parcel is in compliance. The BDSWD shall then issue a written determination of compliance to the landowner and appropriate county SWCD and BWSR. The SWCD may also issue a validation of compliance if applicable and requested by the landowner.
- (6) Request for Modification of Corrective Action Notice. After service of a Corrective Action Notice, the landowner may supply information to the BDSWD in support of a request to modify a corrective action or the timeline for compliance. The BDSWD may, at its discretion, make a written modification to the Corrective Action Notice. Any modification must be served on the landowner in the same manner as subsection 4.4.

E. ENFORCEMENT. Under authority of Minnesota Statutes, the BDSWD may seek remedies against any landowner or responsible party for noncompliance with this Rule including referral to the county attorney for criminal misdemeanor prosecution in the county where the offense occurred. Violations of this Rule may be enforced pursuant to Minn. Stat. § 103D.545.

F. REPORTING DOCUMENTATION. The BDSWD shall maintain the following records for any potential violation of the riparian protection and water quality practices requirements. Said records include, but are not limited to, the following:

- (1) The cause of the violation;
- (2) The magnitude and duration of the violation;
- (3) Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
- (4) Documentation showing whether the violation has the potential to harm the natural resources of the state;
- (5) A record of past violations;

- (6) Efforts by the SWCD, BDSWD, or BWSR to assist the responsible party or parties to become compliant, including written and oral communications with responsible parties; and
- (7) Past and present corrective action efforts by the responsible party or parties.

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SECTION 2. Effective Date. This rule shall be in full force and effect from and after the date of its passage and publication.

  
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 Scott Gillespie, Secretary of the Bois de  
 Sioux Watershed District

STATE OF MINNESOTA            )  
   ) ss.  
 COUNTY OF Traverse            )

On this 16 day of May, 2019, before me, a Notary Public in and for said County and State, personally appeared Scott Gillespie, known to me to be the Secretary of the Bois de Sioux Watershed District, who executed the foregoing instrument, and acknowledged to me that he executed the same on behalf of the Bois de Sioux Watershed District.



  
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 Notary Public, Traverse County, MN

(SEAL)

Date of Approval:                    April 18, 2019

THIS DOCUMENT WAS  
 DRAFTED BY:

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