



Laws of Minnesota 2016, Chapter 85 (S.F. 2503): Amendments to the Buffer Law - Summary and Overview of Amendments

April 25, 2016

Section 1 [Administrative Penalty Orders] amends Board of Water and Soil Resources (BWSR) authority in Minn. Stat. 103B.101, Subd. 12 to issue administrative penalty orders (APO) to require BWSR to use the authority enacted in 2015 for buffer and soil loss enforcement and to specify that BWSR will only hear appeals to APOs that it issues.

Discussion: This change was made to distinguish between the two authorities for APO that BWSR is authorized to use under Minn. Stat. 103B.101 and that for purposes of the Buffer Law and Soil Loss Law it is Subd. 12(a) which provides for \$500 APO as compared to the \$10,000 under Subd. 12. This Section also provides for an administrative appeal process for BWSR-issued buffer and soil loss law APOs that did not exist under the law enacted in 2015.

Section 2 [Administrative Penalty Orders] amends Board of Water and Soil Resources (BWSR) APO authority in Minn. Stat. 103B.101, Subd. 12(a) to specify that APO proceeds are remitted to the entity that issues the APO-county, watershed district or BWSR. Requires BWSR to adopt an APO plan by July 1, 2017

Discussion: These changes were made to ensure that APO revenue is retained by the county, watershed district or BWSR that issues the APO and incurs the cost of the enforcement process. This Section also establishes a clear requirement for BWSR to adopt an APO plan so that it has procedures in place for issuing APOs. The plan will also provide direction and consistency to county and watershed district use of APOs.

Section 3 [Extent of damages; buffers acquired by a drainage authority] clarifies in the drainage law how a drainage authority retroactively compensates a landowner for buffers or alternative practices that were installed to meet the requirements of the 2015 buffer law. The clarification directs a drainage authority to consider the land use prior to the buffer or alternative practice being installed in determining the fair market value of the land.

Discussion: This amendment to the public drainage law (Minn. Stat. 103E) has been reviewed and agreed to by the Drainage Work Group and ensures that landowners are fairly treated when they incur the costs of complying with the buffer requirement and the drainage authority later conducts a redetermination of benefits.

Section 4 [Public waters clarification] clarifies that the term “public water” when used in the 2015 buffer law applies to waters that are on the public waters inventory. The public waters inventory was conducted in the early 1980's to determine the waters of the state where the Department of Natural Resources (DNR) has regulatory authority. This section also defines the term "with jurisdiction" for the purposes of the buffer law.

Discussion: The addition to the definition of public waters in this section states the approach the DNR has been using in creating the buffer protection maps and will neither add to nor reduce the areas that are covered by the buffer requirement.

The new definition of “with Jurisdiction” adds clarity to this term, provides enforcement options for counties and watershed districts, and provides authority for BWSR to review rules, ordinances, or other official controls adopted by counties and watershed districts to ensure they contain procedures for effective enforcement.

Section 5 [Buffer requirement clarification] This section specifies:

1. The buffer requirement under Minn. Stat. 103F.48 is the same as under 103E (Public Drainage Law) and shall not impede drainage management;
2. that the drainage ditch requirement is on public drainage ditches only;
3. that alternative water quality practices allowed in place of buffers must include water retention ponds and other measures that prevent overland flow to a water resource;
4. The buffer width measurement for public waters is measured from the top or crown of the bank or from the edge of the normal water level. The buffer width measurement for public ditches is as specified under 103E; and
5. That this law does not limit eligibility for enrollment or re-enrollment in federal or state conservation programs.

Discussion: This section accomplishes several objectives:

1. Eliminates the potential for inconsistent application of buffer requirements for public ditches by providing that the buffer requirement under this law (Minn. Stat. 103F.48) is identical to the buffer requirement under the public drainage law (Minn. Stat.103E);
 2. Ensures that alternative practices approved by BWSR must include retention and other conservation practices that will prevent or intercept the overland flow of water to a public waters or public ditch, thereby capturing sediment and pollutants before they reach the water course or water body;
 3. Provides a buffer width standard for public waters that is different from that to be used for public ditches, which as stated above is identical to that provided for in the public drainage law. Having distinct standards for each type of water that requires an adjacent buffer should simplify their use by landowners and local governments; and
 4. Provides a clear statement of intent that this buffer requirement should not be interpreted to limit state and federal conservation program eligibility.
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Section 6 [Local water plan update; additional watercourses] gives local water management authorities flexibility in updating their local water plans to include additional watercourses recommended by the local soil and water conservation district. Counties and watershed districts can add the watercourses so long as they provide appropriate notice, and can wait until the next scheduled plan update to include implementation actions associated with these watercourses.

Discussion: This section requires SWCDs to consult with the water planning authority in developing their summary of additional watercourses. This is a critical part of plan development to ensure that all affected water plan authorities are coordinating potential water plan changes. These changes also address county and watershed district concerns over the cost of plan amendment processes by allowing a simplified approach to incorporating the summary of watercourses into their water plans. This incorporation must be done by July 1, 2018. However, implementation of the SWCD recommendation can wait until the next scheduled plan update. The county or watershed district can always choose to update their plan on an earlier schedule, or wait until the One Watershed One Plan is slated to be developed for their area.

Section 7 [Corrective actions; local processes] allows counties and watershed districts to enforce the buffer requirements using local processes in lieu of administrative penalty orders. Counties and watershed districts are required to notify the BWSR by March 31, 2017 of their enforcement intentions. This section also clarifies that when a county or watershed district do not have jurisdiction, the soil and water conservation district must notify the BWSR of noncompliance. APO Plans adopted by a county or watershed district must be consistent with the BWSR APO plan.

Discussion: This section is associated with the definition of “with jurisdiction” in section 4 and significantly clarifies how enforcement authority will be established and specifies the relationship between SWCDs, counties, watershed districts and BWSR. Compliance and enforcement responsibilities are clarified to ensure that whoever has enforcement authority receives notifications of noncompliance from the SWCD who must in turn provide a notice to the landowner of what they need to do and by when to comply with the buffer requirement.

This section also provides a process for counties and watershed districts to inform BWSR of their enforcement intentions by March 31, 2017. The available options for counties and watershed districts to enforce the buffer requirement are rule, ordinance or APO. This date and notice is essential so that BWSR has the time to plan for and ensure it has the capacity for where it will have enforcement responsibility, but also to ensure that counties and watershed districts have adequate time to adopt their ordinance, rule, or APO plan prior to the first buffer compliance date of November 1, 2017.

Section 8 [Funding subject to withholding] specifies that the only money that may be withheld from local governments by the state for lack of buffer law implementation is money from the Board of Water and Soil Resources.

Discussion: This provision is clarified to specify that only BWSR can withhold funds from a county, watershed district, or SWCD that fails to implement their responsibilities under this section. The funds that BWSR may withhold are any available to it and include General Fund, Clean Water Fund, and Outdoor Heritage Fund.

Section 9 [Public drainage system procedure] eliminates the ability of a drainage authority to compensate landowners for buffers beyond the project cost limits in the drainage law. This section also allows for retroactive repayment for ditch buffers acquired after a redetermination of benefits and makes a technical change related to the change on the drainage ditch requirement in section 4 of the bill.

Discussion: This change is made in association with that included in Section 3, which essentially replaces this provision and places it in Minn. Stat. 103E – the public drainage law. The deletion also eliminates certain legal concerns that had been expressed regarding this provision.
