

**MINNESOTA BOARD OF WATER AND SOIL RESOURCES**

**Agency Report on Rules**

**Submitted to the Minnesota Legislature pursuant to  
Laws 2012, chapter 238, section 3**

**January 2013**

DATE: 12/27/12

## LEGISLATIVE REPORT – Cost of Preparation

NAME OF LEGISLATIVE REPORT –*Agency Report on Rules, Board of Water and Soil Resources, January 2013*

Based on: Communications from rule writing contacts in agency divisions

Minnesota Statute Reference: Laws 2012, Chapter 238, section 3

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Description of Cost	Further explanation if necessary	Amount
Staff Time	15 hours – BWSR	\$785
	14 hours – DNR	\$882
Duplication Cost (includes paper)		
Other:		
<b>TOTAL TO PREPARE REPORT</b> <i>(Note: Right click on amount cell and choose update to complete)</i>		\$1,667.00

## Executive Summary

Minnesota Statutes 2012, section 14.3691, requires that the Board of Water and Soil Resources report to the legislature by January 15, 2013, on the department rules. Following is the statutory language.

### **Laws 2012, Regular Session, Chapter 238, Section 3. REPORTS.**

By January 15, 2013, the Pollution Control Agency, Department of Natural Resources, Board of Water and Soil Resources, Environmental Quality Board, and Department of Agriculture must each report to the governor, the Legislative Coordinating Commission, and the policy and funding committees and divisions with jurisdiction over the agency. Each report must update information that was reported as required by Laws 2000, chapter 469, section 4, subdivision 1. The reports from the Board of Water and Soil Resources and the Environmental Quality Board must include the information required by Laws 2000, chapter 469, section 4, subdivision 1.

### **Laws 2000, chapter 469, section 4, subdivision 1**

#### **Minnesota Statutes, section 14.3691. Rule review and legislative oversight.**

Subdivision 1. Reports. An entity whose rules are scheduled for review under this section must report to the governor and the appropriate committees of the legislature by August 1 of the year before the legislative session in which the entity's rules are scheduled for review. The speaker of the house of representatives and the senate committee on rules and administration shall designate the appropriate committees to receive these reports. The report must: (1) list any rules that the entity recommends for repeal; (2) list and briefly describe the rationale for rules that the entity believes should remain in effect; and (3) suggest any changes in rules that would improve the agency's ability to meet the regulatory objectives prescribed by the legislature, while reducing any unnecessary burdens on regulated parties. Any costs of preparing this report must be absorbed within funds otherwise appropriated to the entity.

The Board of Water and Soil Resources (BWSR) rules are located in chapters 8400 through 8420 of Minnesota Rules 2012. Following is a listing of the chapter topics within the scope of the BWSR and its page designation in this report. This report addresses the following topics for each chapter:

- 1) Any rules that the entity recommends for repeal;
- 2) Briefly describe the rationale for rules that the entity believes should remain in effect; and
- 3) Identify any changes in the rules to improve the agency's ability to meet the regulatory objectives prescribed by the legislature, while reducing any unnecessary burdens on regulated parties.

Minnesota Statutes, section 3.197, requires the department to include in any report to the legislature the cost of preparing the report. The cost is detailed in the preceding page, Cost of Preparation.

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## **Chapter 8400 Cost-share Program**

### **1. Rules Recommended for Repeal**

The Chapter is currently being revised and the following parts are proposed for repeal under this rulemaking:

- 8400.0100, subparts 2a, 4, 10a, 14b, 15, 16, 16a, 16b, 18a, 18b, 19a, 20a, 20b, 20d, 22a, 25, 26, 27;
- 8400.0200;
- 8400.0300, subparts 1 and 3;
- 8400.0600, subparts 1 and 3;
- 8400.0700, 8400.0800;
- 8400.0900, subpart 3; 8400.1000; 8400.1100;
- 8400.1200; 8400.1250; 8400.1300;
- 8400.1400;
- 8400.1405;
- 8400.1460;
- 8400.1500;
- 8400.1600;
- 8400.2900; 8400.3030, subparts 6, 6a, 10a, 19, 20, 20a, 24, 25, 26, 28, 32, 39c, 40, 44, 46;
- 8400.3060
- 8400.2870.

Parts of the rule are being repealed because they were repealed by statute, are obsolete, or are being replaced by agency policy.

### **2. Rationale for Rules**

#### **Erosion Control and Water Management Program**

Parts 8400.0050 through 8400.2900 provide for the Erosion Control and Water Management Program (commonly referred to as the Cost-share Program) which is established by Minnesota Statutes, section 103C.501. Under this program, state funds are provided to soil and water conservation districts (SWCD) so they can provide technical and financial assistance to land occupiers to install conservation practices that reduce erosion, control sedimentation, improve and protect water quality or address water quantity problems due to altered hydrology on the lands they own or manage. This rule is necessary to establish the administrative details for this program, including the purpose, definitions, authority, determination of cost-share rates, allocation of state funds to SWCDs, SWCD use of state funds, application and contracting with land occupiers.

#### **Easement Program**

Parts 8400.3000 through 8400.3930 provide for the Reinvest in Minnesota (RIM) Reserve Program which is established by Minnesota Statutes, sections 103F.505 to 103F.531. Under the RIM Reserve Program, BWSR provides funds to SWCDs so they can provide technical

and financial assistance to land occupiers to acquire conservation easements on certain marginal agricultural lands and wetlands. This rule is necessary to establish the administrative details for this program, including the definitions, authority, program criteria, application processes, and easement payment rates.

### **3. Recommended changes**

The board is undergoing rulemaking to amend the entire rule. The rule amendments largely consist of non-substantive changes that are driven by the following:

- Improving the clarity of the rule by simplifying, updating and re-organizing the language;
- Presenting rule provisions based on local or state responsibility;
- Deleting definitions no longer used in the rule;
- Deleting provisions which will be addressed via statutorily required BWSR Board adopted policy; and
- Updating statutory and rule references.

The rule amendments were adopted by the BWSR Board on October 24, 2012, and will be submitted to the Office of Administrative Hearings by the end of November. Final adoption is anticipated in early 2013.

*Authority: Minnesota Statutes 103C.501 and 103F.505 to 103F.531, 103F.411*

## **Chapter 8410 Local Water Management**

### **1. Rules Recommended for Repeal.**

None

### **2. Rationale for Rules**

#### **Metropolitan Area Local Water Management**

Parts 8410.0010 through 8410.0040 provide the scope of the rules, definitions, content of joint powers agreements, and removal of organization representatives. The rules are necessary to establish the range and extent of the rules; set forth key definitions; prescribe minimum requirements for the content of watershed management organization joint powers agreements as directed by Minnesota Statutes, section 103B.211, subdivision 1, paragraph b; and to provide for removal of managers as directed by Minnesota Statutes, section 103B.227, subdivision 3.

#### **Content of Watershed Management Organization Plans**

Parts 8410.0050 through 8410.0150 provide for an executive summary, land and water resource inventory, impact on other units of government, establishment of goals and policies, assessment of problems, implementation program, impact on local government, implementation priorities, implementation components, plan contents, amendments, and annual reporting requirements. The rules are necessary to establish minimum requirements for the content of watershed management organization watershed management plans and amendments to plans as directed by Minnesota Statutes, section 103B.231, subdivision 6; and to establish minimum requirements for annual activity and financial reporting as directed by Minnesota Statutes, section 103B.231, subdivision 14.

#### **Content of Local Plans**

Parts 8410.0160 through 8410.0180 provide the general structure of local plans, plan contents, and determination of failure to implement procedures. The rules are necessary to establish minimum standards for local plans as directed by Minnesota Statutes, section 103B.235, subdivision 2, paragraph b; and to establish procedures for making determinations on whether a plan is being implemented as directed by Minnesota Statutes, section 103B.231, subdivision 13.

### **3. Recommended Changes**

The board is undergoing rulemaking to amend the entire rule. A rule advisory committee met several times during the past two years and developed a draft revised rule. The draft revised rule emphasizes the identification and assessment of issues up front prior to development of a watershed management plan; requires an initial plan “kickoff” meeting; focuses an organization on developing a plan based on priority issues in consideration of water management problems and prevention, funding, and the regional/county/state/federal priorities identified; increases flexibility by allowing references to resource data rather than including the actual data; recognizes increased availability of data on the web and reduces the



volume of a plan; goals are required for priority issues that have been identified as well as water quantity, water quality, public drainage systems, groundwater and wetlands; requires goals to be measurable; requires establishment of procedures for evaluating progress towards achieving goals and the implementation plan at a minimum of every two years; requires plan amendment if evaluation of progress on the implementation actions warrants; requires local water plans to be updated only once every ten years in conjunction with the Metropolitan Council's schedule for revising comprehensive plans; allows a plan to also serve as a Total Maximum Daily Load (TMDL) Implementation Plan; and allows plans to establish an Environmental Trading Program. The board intends to issue a request for comments to begin the formal rulemaking process.

*Authority: Minnesota Statutes, sections 103B.101, 103B.211, 103B.227, 103B.231, 103B.235*

## **Chapter 8415 Watershed District Appeals**

### **1. Rules Recommended for Repeal.**

None

### **2. Rationale for Rules**

#### **Purpose, definitions and appeals**

Parts 8415.0100 through 8415.0120 provide the rules of procedure that govern appeals filed with the board involving watershed district rules and permit decisions, including an optional expedited process for appeals of watershed district permit decisions made by public transportation authorities. The rules are necessary to establish procedures for processing appeals as directed by Minnesota Statutes, section 103D.537, item c.

### **3. Recommended Changes**

There are no recommended changes.

*Authority: Minnesota Statutes, sections 103D.537*

## **Chapter 8420 Wetland Conservation**

### **1. Rules Recommended for Repeal**

None

### **2. Rationale for Rules**

The rule is necessary for the implementation of the Wetland Conservation Act, the state's primary wetland regulation program. The rule provides for:

- Program purpose and scope;
- Definitions;
- Local government unit duties and procedures;
- Application procedures;
- Boundary or type, no-loss, and exemption standards;
- Wetland banking;
- Wetland planning;
- Enforcement, appeals, and compensation; and
- Activities under Department of Natural Resources authority.

### **3. Recommended Changes**

There are no recommended changes at this time.

*Authority: Minnesota Statute, section 103B.3355, 103G.2242*