

SEP 29 1994



September 23, 1994

Ms. Maryanne V. Hruby, Executive Director  
Legislative Commission to Review Administrative Rules  
55 State Office Building  
100 Constitution Avenue  
Saint Paul, Minnesota 55155

**RE: In the Matter of Proposed Amendments to the  
Permanent Rules of the Minnesota Board of Water and  
Soil Resources Governing the Comprehensive Local  
Water Planning Program**

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155 S. Wabasha Street  
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(612) 296-3767  
Fax (612) 297-5615

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**Metro Region:**

Southbridge Office Building  
155 S. Wabasha Street  
Suite 104  
St. Paul, MN 55107  
(612) 282-5116  
Fax (612) 297-5615

Dear Ms. Hruby:

The Minnesota Board of Water and Soil Resources intends to adopt amendments to the permanent rules governing the Comprehensive Local Water Planning program. We intend to publish a Notice of Intent to Adopt Rules Without a Public Hearing in the October 17, 1994 issue of the *State Register*.

As required by *Minnesota Statutes*, sections 14.131 and 14.23, the Board has prepared a Statement of Need and Reasonableness which is now available to the public. Also as required, a copy of this statement is enclosed with this letter.

For your information, we are also enclosing a copy of the Notice of Intent to Adopt Rules Without a Public Hearing and a copy of the proposed amendments to the permanent rule in this matter.

If you have any questions about these rules, please contact me at 297-5617.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas J. Thomas".

Douglas J. Thomas  
Water Planning Coordinator

enclosures: Statement of Need and Reasonableness  
Notice of Intent to Adopt Rules Without a Public Hearing  
Proposed Amendments to Permanent Rules

cc: Ron Harnack, Executive Director  
Greg Larson, Administrator Land & Water Section

h:lcrarlwp.not/djt

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STATE OF MINNESOTA  
BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Proposed Amendments to    STATEMENT OF NEED  
Rules of the Board of Water and Soil Resources      AND REASONABLENESS  
Governing the Comprehensive Local Water  
Planning Program M.R. 9300.

General Statement

The Minnesota Board of Water and Soil Resources ("Board") administers several water management programs through counties. Counties provide a framework in Grater Minnesota for the development and implementation of comprehensive surface water, groundwater, and related land resource protection and management plans. The amendments proposed to this rule (parts 9300.0010 to 9300.0210) govern the Comprehensive Local Water Planning (CLWP) program in greater Minnesota.

The amendments to the permanent rule were proposed to improve the clarity of the existing rule and to include statutory requirements for required plan content. The principal reasons for amending the rules were to:

1. incorporate statutory changes due to Laws of Minnesota 1989, Chapter 326, art. 2, sec. 11, subd. 6 which added a requirement for plans to include objectives for sensitive areas, and wellhead protection areas;
2. incorporate updated statutory references due to Laws of Minnesota 1990, Chapter 391, which recodified, clarified, and relocated provisions related to water law;
3. incorporate statutory changes due to Laws of Minnesota 1991, Chapter 354, art. 2, § 3, subd. 6, clause (3) which added a requirement that plans must include objectives for wetland preservation, enhancement, restoration, and establishment;
4. incorporate statutory changes due to Laws of Minnesota 1991, Chapter 160, § 2 which added a requirement for plans to specify controls that utilize the best available technology to minimize effects from stormwater runoff from developing areas;
5. include a procedure for minor amendments; and
6. improve the clarity of the permanent rule.

The Board published a Notice of Solicitation for Outside Information and Opinions regarding revision of rules governing the Comprehensive Local Water Planning program in the State Register (Vol. 18, No. 13) on September 27, 1993. No comments were received. In April of 1994 the Board hosted two meetings for local water planning coordinators to discuss the existing permanent rule and seek opinions on the revision. Comments from those meetings were considered in the drafting process. The Board unanimously endorsed the June 1994 draft, and directed staff to prepare a notice for adoption of the rule amendments without a public hearing because it believes the proposed amendments as non-controversial.

### Statutory Authority

Minnesota Statutes section 103B.301 et. seq. authorizes the Board in cooperation with counties and state agencies to implement a comprehensive local water planning program. Specific authority to promulgate rules for implementation of the CLWP is granted by Minnesota Statutes section 103B.321, Subd. 2. General rulemaking authority is given to the Board by Minnesota Statutes section 103B.101, Subd. 7.

### Small Business Consideration

The proposed amendments to the rule relates to local government implementation of a state program. Therefore, pursuant to Minnesota Statutes section 14.115, subdivision 7(2), the Board is exempt from describing specific impacts to small businesses.

### Fiscal Impact

Minnesota Statutes section 14.11, subdivision 1, does not apply because adoption of the proposed amendments will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the proposed amendments.

### Agricultural Land Impact

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have and impact on agricultural land.

### Analysis of Proposed Amendments

#### **A. NON-SUBSTANTIVE AMENDMENTS TO THE PERMANENT RULE.**

Numerous amendments to the permanent rule have been proposed which:

1. incorporate updated statutory references due to Laws of Minnesota 1990, chapter 391, which recodified, clarified, and relocated provisions relating to water law;
2. improve the clarity of the permanent rule; or
3. reorganized sections of permanent rule.

1. the following amendments regarding statutory recodification are reflected in:

- 9300.0010, "applicability";
- 9300.0010, "definitions", subparts relating to:
  - (a) "public waters"
  - (b) "state board"
  - (c) "watershed management organization"
  - (d) watershed units";
- 9300.0030, "applicability";

- 9300.0070, "shoreland", subpart 5, item C(2);
- 9300.0140, "local plan review", subpart 4, item C;
- 9300.0170, "final state review", subparts 1,3,4, and 5;
- 9300.0200, "informal resolution of disputes", subparts 1(A and D), and subpart 3;
- 9300.0210, "formal resolution of disputes", subpart 1.

2. Amendments proposed to improve the clarity of the rule are reflected in:

- 9300.0010, "definitions", subparts relating to:
  - (a) "geographic indicator",
  - (b) "major watershed",
  - (c) "minor watershed unit",
  - (d) "public waters", and
  - (e) "public waters wetland";
- 9300.0030, "procedures for water planning", subpart 4., item B;
- 9300.0040, "data consistency";
- 9300.0050, "physical environment, land use, and development", items B(1),(2), and (5), and item E;
- 9300.0070, "surface water, ground water, and related land resources", subparts relating to:
  - (a) "applicability",
  - (b) "water quantity information",
  - (c) "water quality information",
  - (d) "information on special land use conditions that influence water quality and quantity", and
  - (e) "information on related land resources";
- 9300.0090, "problems and opportunities", subpart 2;
- 9300.0170, "final state review", subpart 5;
- 9300.0180, "amendment of local plans and official controls", subpart 1; and
- 9300.0210, "formal resolution of disputes", subparts 2 and 3.

## **B. SUBSTANTIVE AMENDMENTS TO THE PERMANENT RULE.**

### **9300.0030 to 9300.0200**

The existing permanent rule in parts 9300.0030 to 9300.0200 refers only to developing a plan. The proposed amendments to the rule adds the words "revise" and "revision" throughout the plan after any reference to develop or development. This is reasonable as counties are required to revise their plan's based on M.R. 9300.0190 "amendment of a comprehensive water plan", which requires that a water plan must apply to every year through the year 1995 or any later year that is evenly divisible by five. The addition of the words "revise" and "revision" will insure that the rule requirements will apply to required plan updates and/or revisions.

**9300.0040 DATA CONSISTENCY WITH MINNESOTA PLANNING, LAND MANAGEMENT INFORMATION CENTER GUIDELINES.**

- Rule revisions in this part reflect the current administrative organization of state agencies. State responsibility for data guidelines and is currently with Minnesota Planning, Land Management Information Center, formerly Minnesota State Planning Agency.

**9300.0050 PHYSICAL ENVIRONMENT, LAND USE, AND DEVELOPMENT.**

- The reference in this part which requires the inclusion of information collected under this part must be included in the plan is deleted. It is being replaced with a more permissive requirement which requires that information collected be included in the plan when it provides the basis for understanding a county's present or future water related water-related opportunities or problems that are or will be faced by the county. This change is reasonable as it more accurately reflects existing rule language in 9300.0020, subpart 2., "scope" which states that "information is relevant for inclusion in the plan if it provides a basis for understanding a county's present or future water-related opportunities or problems that are or will be faced by the county".
- Subpart B., item (3), "a map or description of groundwater sensitivity to pollution" is added. Laws of Minnesota 1989, Chapter 326, art. 2, sec. 11, subd. 6 requires plans to include objectives for sensitive areas, and wellhead protection areas. It is reasonable and consistent with the current structure of the rule to require the preparation of a map or description of groundwater sensitivity to pollution to assist in the development of the required objective.
- Subpart B., items (6) and (7), Adds a requirement for the collection of a map of public drainage systems, and a map of public dams and control structures. This change does not require anything different than the existing rule. It was reworded to provide more specific criteria for counties to following collecting the required information.
- Subpart F., item (3), adds a requirement for a map of the wellhead contribution areas in the county if known. Laws of Minnesota 1989, Chapter 326, art. 2, sec. 11, subd. 6 requires plans to include objectives for sensitive areas, and wellhead protection areas. It is reasonable and consistent with the current structure of the rule to require the preparation of a map of wellhead contribution areas if known to assist in the development of the required objective.

**9300.0070 SURFACE WATER, GROUND WATER, AND RELATED LAND RESOURCES.**

- Subpart 1., Language is added to this section specifying that information collected under this section must only be included in the plan if it provides the basis for understanding the county's present or future water-related opportunities or problems that are or will be faced by the county. It also specifies that information not presented in the plan must be maintained in a data repository within the county. This change is reasonable in that it allows counties to present, in the plan, only data that is pertinent.

This change also more accurately reflects the information requirements identified in 9300.0020, subpart 2., scope of plans.

- Subpart 2., deletes sentence requiring that information collected under this subpart must be included in the plan. This change is reasonable in that it more accurately reflects the information requirements identified in 9300.0020, subpart 2., scope of plans, which states that "information is relevant for inclusion in the plan if it provides a basis for understanding a county's present or future water-related conditions, and if it contributes to the understanding of water-related opportunities or problems that are or will be faced by the county".
- Subpart 3., deletes sentence requiring that information collected under this subpart must be included in the plan. This change is reasonable in that it more accurately reflects the information requirements identified in 9300.0020, subpart 2., scope of plans, which states that "information is relevant for inclusion in the plan if it provides a basis for understanding a county's present or future water-related conditions, and if it contributes to the understanding of water-related opportunities or problems that are or will be faced by the county".
- Subpart 4., deletes sentence requiring that information collected under this subpart must be included in the plan. This change is reasonable in that it more accurately reflects the information requirements identified in 9300.0020, subpart 2., scope of plans, which states that "information is relevant for inclusion in the plan if it provides a basis for understanding a county's present or future water-related conditions, and if it contributes to the understanding of water-related opportunities or problems that are or will be faced by the county".
- Subpart 5., deletes sentence requiring that information collected under this subpart must be included in the plan. This change is reasonable in that it more accurately reflects the information requirements identified in 9300.0020, subpart 2., scope of plans, which states that "information is relevant for inclusion in the plan if it provides a basis for understanding a county's present or future water-related conditions, and if it contributes to the understanding of water-related opportunities or problems that are or will be faced by the county".
- Subpart 4., item C.(1), adds a requirement for a map showing the location and type of drainage systems in the county. In order to assess significant water quality and quantity effects from public and private ditch systems it is necessary to know their location in relation to other water resources, soil types, and land uses. Therefore it is reasonable to require a map of ditch systems in addition to the amounts expended by year for repair work on the drainage systems in the county.
- Subpart 4., item C.(3), adds language to provide additional guidance on what type of engineering reports need to be summarize. During the development of plans under the current rule considerable confusion existed over what types of information was being required to be summarized. Therefore, it is reasonable to provide additional guidance on this matter.
- Subpart 5., deletes sentence requiring that information collected under this subpart must be included in the plan. This change is reasonable in that it more accurately reflects the information requirements identified in 9300.0020, subpart 2., scope of

plans, which states that "information is relevant for inclusion in the plan if it provides a basis for understanding a county's present or future water-related conditions, and if it contributes to the understanding of water-related opportunities or problems that are or will be faced by the county".

- Subpart 5., item A.(5), adds sentence requiring the delineation of high priority areas for wetland preservation, enhancements, restoration, and establishment. This change is necessary to incorporate into M.R. 9300 requirements that were established in M.R. 8420.0350, subpart 2.(A), "Water management plans prepared by counties outside the metropolitan area under Minnesota Statutes, section 103B.311 must identify those areas that qualify as high priority areas for wetland preservation, enhancement, restoration, and establishment. These priority areas shall be included in the next scheduled water management plan update."
- Subpart 5., items B. (1) and (2), adds language for new information requirements for floodplains. Guidance in the current rule was insufficient, making it difficult for counties to understand the implications of floodplain management and regulation within the county. The purpose of the proposed change is to provide sufficient guidance on the information that needs to be collected in order for a county to understand and assess floodplains and their management.
- Subpart 5., item B. (6), adds a requirement that local water plans describe all potential Department of Natural Resources flood damage reduction grant projects. This is reasonable since the Department of Natural Resources requires that projects funded under their Flood Damage Reduction grant program must be identified in the applicant county's local water plan.

#### **9300.0090 PROBLEMS AND OPPORTUNITIES**

- Subpart 1., adds goals and policies to the purpose statement. It is reasonable that the identification of problems and opportunities should also guide the development of goals and policies formulated as part of a local water plan.
- Subpart 2., adds a sentence which requires a county to address in its plan issues that have been identified as having regional significance or importance. Since one of the goals of local water planning is to consider upstream and downstream effects of local activities, and that plans do not impede the efforts of downstream counties it is reasonable that each local water plan be required to address issues which have been identified as having regional significance or importance.
- Subpart 3., item C., deletes "assess information gathered" and replaces it with "investigate those problems and opportunities derived from assessments of data". Being the purpose of subpart 3 is to determine water related issues, problems, and opportunities it is reasonable to require that problems and opportunities derived from assessments of data also be investigated.

#### **9300.0100 ESTABLISHMENT OF COUNTY GOALS AND POLICIES.**

- Adds language to this section which includes corresponding policies in addition to goals. It is reasonable to include corresponding policies, in addition to goals, in local water plans because they provide the necessary guidance and direction to local staff

and governmental units as they make decisions on local land use and permit decisions.

#### **9300.0125 IMPLEMENTATION PROGRAM.**

- Subpart 1., adds requirement for the establishment of standards for stormwater runoff. The inclusion of this requirement is necessary for the rule to conform with Minnesota Statutes 103B.3365., Water Retention, Subpart 4., which requires that local water plans must specify controls that utilize the best available technology to minimize off-site stormwater runoff, maximize overland flow and flow distances over surfaces covered with vegetation, increase on-site infiltration, replicate predevelopment hydrologic conditions as nearly as possible, minimize off-site discharge of pollutants to ground and surface water, encourage natural filtration functions, and reduce mosquito breeding habitat.
- Subpart 3., This is a new section which provides minimum standards for design of new stormwater conveyance, ponding, and treatment systems. Because Minnesota Statutes 103B.3365 requires that plan include controls for stormwater runoff it is reasonable to include guidance in the rule to counties to address this mandated element of local water plans. These standards are consistent with the guidelines for stormwater management adopted by the BWSR pursuant to Minnesota Statutes 103B.3365, Subpart 5., Guidelines.
- Subpart 5., This is a new section which requires counties to include a discussion of the roles and responsibilities of local governmental units in the county relating to the implementation of the local water plan. Since one of the purposes of local water planning is to coordinate the efforts of all local governmental units in the county it is beneficial and reasonable that the local water plan present a discussion of the various roles and responsibilities of the various local governmental units.

#### **9300.0165 PRELIMINARY STATE REVIEW.**

- This is a new section including all of subparts 1, 2, and 3. The purpose of this section is to clearly define the role of the state agencies in providing for a qualitative review of plans in addition to determination of consistency with state statutes. During the preparation of the first local water plans it became evident that in addition to determining consistency with state statutes, agency personnel had considerable expertise and knowledge in water and related land resource issues that aided counties in the interpretation and assessment of resource data and conditions. Therefore it is beneficial and reasonable to include a state agency preliminary review that allows for a qualitative review in the rule.

#### **9300.0170 FINAL STATE REVIEW.**

- Adds the word final to "state review", this is reasonable in that it differentiates between state preliminary review and final state review.
- Subpart 2., deletes the state planning agency from the required list of state agencies which plans must be transmitted to for final review. This was done to make the rule consistent with Minnesota Statutes 103B.315, Subpart 5., "State review", which no longer references the state planning agency.



**9300.0190 AMENDMENT OF A COMPREHENSIVE WATER PLAN.**

- Subparts 3, 4, and 5., adds a minor amendment procedure to the rule. It is reasonable to expect that from time to time counties will propose amendments to their local water plans which can be considered minor in scope, therefore it is reasonable to add a minor amendment procedure to the rule which allows counties to adopt minor changes without going through the formal amendment process which can take six months or more to complete.

**9300.0200 INFORMAL RESOLUTION OF DISPUTES.**

- Subpart 3., deletes reference to the "chair" and replaces it with the "dispute resolution committee". This is reasonable in that it correctly identifies the dispute resolution committee as the entity to resolve disputes pursuant to Minnesota Statutes 103B.101, Subpart 10., which establishes the dispute resolution committee of the Board to hear and resolve disputes under Minnesota Statutes 103B.345.

**C. REORGANIZATION OF THE PERMANENT RULE**

**9300.0020 PURPOSES OF PLANNING PROCESS AND SCOPE OF PLAN.**

- Subpart 3., moves the section on principles of local water planning from 9300.0170 to 9300.0020, Subpart 3. This is reasonable in that it states up front in the rule what the expectation of a local water plan is.

**9300.0070 SURFACE WATER, GROUND WATER, AND RELATED LAND RESOURCES.**

- Subpart 2 through 5., all assessments and implications of data found in these subparts are deleted and moved in their entirety to a new section, 9300.0085 ASSESSMENTS AND IMPACTS OF EXPECTED CHANGES TO SURFACE WATER, GROUNDWATER, AND RELATED LAND RESOURCES. By reorganizing the assessments and implications into one sections it is easier for counties to prepare assessments and implications based on watershed units and groundwater systems. Also by including all assessments and implications into one section they are more easily identified.


**9300.0125 IMPLEMENTATION PROGRAM.**

- Subparts 1, 2, and 4., are deleted from 9300.0160 of the existing rule and placed into 9300.0125 in the proposed rule. This change also places the section on implementation program after objectives and plan of action which is chronologically desirable.

Conclusion

Based on the forgoing, the Board's proposed amendments to the permanent rules are both necessary and reasonable.

9/23/94  
Date

  
Ronald D. Harnack  
Executive Director

**STATE OF MINNESOTA  
BOARD OF WATER AND SOIL RESOURCES**

**In the Matter of Proposed Adoption of  
Amendments to the Permanent Rules  
Governing the Comprehensive Local Water  
Planning Program**

**NOTICE OF INTENT  
TO ADOPT A RULE  
WITHOUT A  
PUBLIC HEARING**

The Board of Water and soil Resources ("Board") intends to adopt amendments to a permanent rule without a public hearing following the procedures set forth in the Administrative Procedures Act, *Minnesota Statutes*, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed amendments and may also submit a written request that a hearing be held on the amendments.

**Agency Contact Person.** Comments or questions on the amendments and written requests for a public hearing on the amendments must be submitted to:

Douglas J. Thomas, Water Planning Coordinator  
Minnesota Board of Water and Soil Resources  
Southbridge Office Building  
155 South Wabasha, Suite 104  
Saint Paul, Minnesota 55107

Telephone: 612-297-5617

FAX: 612-297-5615

Electronic mail: [doug@bwsr-mn.bwsr.state.mn.us]

**Subject of Rule and Statutory Authority.** The proposed amendments pertain to the inclusion of added statutory requirements for plan content, and modifications to improve the clarity and content of the rule. The statutory authority to adopt these amendments is *Minnesota Statutes*, 103B.321, Subd. 2.. A copy of the proposed amendments is published in the *State Register* and attached to this notice as mailed.

**Comments.** Comments are encouraged. You have until 4:30 pm, November 16, 1994, to submit written comment in support of or in opposition to the proposed amendments or any part or subpart of the proposed amendments. Your comments must be in writing and received by the agency contact person by the due date. Your comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.

**Request for Hearing.** In addition to submitting comments, you may also request that a hearing be held on the amendments. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 pm on November 16, 1994. Your written request must include your name and address. You are encouraged to identify the portion of the proposed amendments which caused your request, the reason for the request, and any changes you want made to the proposed amendments. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the Board will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Modifications.** The proposed amendments may be modified as a result of public comment. The modifications must be supported by data and views submitted to the Board and may not result in a substantial change in the proposed amendments as attached and printed in the *State Register*. If the proposed amendments affect you in any way, you are encouraged to participate in the rulemaking process.

**Statement of Need and Reasonableness.** A Statement of Need and Reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments.

**Small Business Considerations.** In preparing the proposed amendments to the permanent rule, the Board has considered the requirements of *Minnesota Statutes*, sections 14.115, subdivision 7(2), in regard to the impact on small businesses. The adoption of the proposed amendments relate to the development of plans by local government. Therefore, the Board claims exemption to describing specific impacts to small businesses. If you believe the proposed amendments will affect small businesses you are encouraged to provide comments to the agency contact person in the manner described in the "comments" section of this notice.

**Expenditure of Public Money by Local Public Bodies.** *Minnesota Statutes*, section 14.11, subdivision 1, does not apply because adoption of the proposed amendments to the permanent rule will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the proposed amendments.

**Impact on Agricultural Lands.** In preparing the proposed amendments to the permanent rule, the board has considered the requirements of *Minnesota Statutes*, section 14.11, subdivision 2, in regard to the impact on agricultural lands. The proposed amendments to the rule relate to development of comprehensive local water plans. Therefore, the Board claims exemption because adoption of the proposed amendments will not result in direct and substantial adverse impacts to agricultural lands. If you believe the proposed amendments will result in direct and substantial adverse impacts to agricultural lands, you are encouraged to provide comments to the agency contact person in the manner described in the "comments" section of this notice.

**Adoption and Review of Rule.** If no hearing is required, after the end of the comment period the Board may adopt the proposed amendments. The proposed amendments and supporting documents will be submitted to Attorney General for review as to legality and form to the extent that form relates to legality. You may request to be notified of the date the proposed amendments are submitted to the Attorney General or be notified of the Attorney General's decision on the proposed amendments. If you wish to be so notified, or if you wish to receive a copy of the adopted amendments, submit your request to the agency contact person listed above.

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Date

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Ronald D. Harnack  
Executive Director