



# Administrative Penalty Order (APO) Plan for Buffer Law Implementation

June 28, 2017

This document was adopted by the Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. §103B.101, subd. 12(a) and (b) and Minn. Stat. §103F.48, subd. 7(c) to provide procedures for the issuance of APOs for counties and watershed districts and BWSR. It is a guide, not a rule. It is not a statement of general applicability and future effect. It is not designed to amend statute. Statutes are subject to change and if the language of this Plan differs from statute, the statute controls. In addition, users of the document are encouraged to obtain legal advice of an attorney regarding their specific application of Minn. Stat. §103F.48.

This document is organized as follows:

- A. Part A contains guidance for counties and watershed districts that elect to use Administrative Penalty Orders to enforce the riparian protection and water quality practices requirements of Minn. Stat. §103F.48;
- B. Part A is best used in conjunction with Procedure 9: BWSR's Review of Local Buffer Enforcement Rules, Ordinances and Official Controls when evaluating a county or watershed district buffer enforcement mechanism for consistency with this Administrative Penalty Order Plan and Minn. Stat. §103F.48, subd. 1(j); and
- C. Part B shall be used when BWSR is the enforcement authority for the riparian protection and water quality practices requirements of Minn. Stat. §103F.48.

## Background

In 2015 the Minnesota Legislature passed the "Riparian Protection and Water Quality Practices" law codified in Minn. Stat. §103F.48, which states: It is the policy of the state to establish riparian buffers and water quality practices to:

- 1) protect state water resources from erosion and runoff pollution;
- 2) stabilize soils, shores, and banks; and
- 3) Protect or provide riparian corridors.

Subdivision 3 of the law requires the fee title landowner<sup>1</sup> with property adjacent to a water body identified and mapped on the Buffer Protection Map to maintain a buffer to protect the State's water resources as specified in the law. Minnesota Statutes 103F.48 also authorizes counties, watershed districts and BWSR to require that landowner's violations of the riparian protection and water quality practices provided in Minn. Stat. §103F.48 be corrected and to assess administrative penalties to landowners who fail to comply. The APO authority is an enforcement tool to gain compliance with the riparian protection and water quality practices requirements in order to achieve the purposes of the law.

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<sup>1</sup> In certain circumstances, the landowner includes the landowner's agent or operator, see Minn. Stat. §103F.48, subd. 7(g) and subd. 9.

This law also directs BWSR in subdivision 7 to “adopt a plan containing procedures for the issuance of APOs by local governments and BWSR” which must be published in the State Register no later than July 1, 2017. The BWSR APO Plan, and any subsequent amendments, become effective 30 days after publishing. The procedures that BWSR will use when it is the enforcement authority are contained in Part B of this Plan.

This Plan provides guidance for counties, watershed districts or BWSR to effectively use APO authority to ensure that the landowner of property adjacent to a waterbody shown on the Buffer Protection Map comply with the riparian protection and water quality practices requirements of Minn. Stat. §103F.48. The primary goal is to protect water quality through compliance rather than to exact penalties. Thus, the responsible party or parties will have the opportunity to come into compliance before any penalties are assessed.

In addition, BWSR has developed additional documents to support implementation of the riparian protection and water quality practices requirements by BWSR, local governments and landowners. Local governments and landowners should comply with these documents, as appropriate, and encouraged to review the guidance when considering actions to comply with these requirements. These documents are available on BWSR’s website.

### **Enforcement responsibilities of Soil and Water Conservation Districts, Counties, Watershed Districts and BWSR**

*Soil and water conservation districts (SWCD)* are required under Minn. Stat. §103F.48, subdivision 6 to track landowners progress toward compliance under subdivision 7 and must notify the county or watershed district with jurisdiction and BWSR if it determines a landowner is not in compliance with the riparian protection and water quality practices requirements.

*Counties and watershed districts* are not required to enforce the riparian protection and water quality practices requirements of Minn. Stat. §103F.48, but may elect to exercise their jurisdiction as provided in subdivision 7 by notifying BWSR and identifying the ordinance, rule, or other official control it intends to use to carry out its compliance and enforcement authority. This may include the issuance of APOs and an associated penalty if the county or watershed district had adopted an APO plan consistent with the BWSR APO Plan. In areas where the county or watershed district have not elected to have jurisdiction, BWSR is required under §103F.48, subdivision 7(c) to carry out enforcement responsibilities.

*Counties and watershed districts with jurisdiction and BWSR* are authorized under Minn. Stat. §103B.101, subdivision 12a, to require that violations of the riparian protection and water quality practices requirements be corrected and to assess administrative penalties. In addition, Minn. Stat. §103F.48, subdivision 7, authorizes counties and watershed districts to enforce the riparian protection and water quality practices requirements by ordinance, rule, or by adopting an APO plan consistent with the Plan adopted by BWSR. A model county and watershed district APO Plan is provided in part A.

BWSR is required under Minn. Stat. §103F.48, subdivision 1(j), to determine whether a county or watershed district that has elected jurisdiction has adopted a rule, ordinance or other official control providing adequate procedures for APO issuance, enforcement and appeals for §§103F.48 and 103B.101, subd. 12a. In addition, BWSR has the responsibility to adopt an APO Plan by July 1, 2017 and to ensure that a county or watershed district APO plan is consistent with the Plan adopted by BWSR under Minn. Stat. §103F.48, subdivision 7(c). Minn. Stat. §103F.48, subdivision 9, establishes an appeals process that landowners or their agents or operators can use to appeal APOs issued by counties, watershed districts or BWSR.

## Part A. Model County and Watershed District APO Plan

### A. Enforcement Procedures

A county or watershed district that elects to exercise its jurisdiction to enforce the requirements of Minn. Stat. §103F.48 must adopt a rule, ordinance, or other official control that provides adequate procedures for the issuance of administrative penalty orders, enforcement and appeals, under Minn. Stat. §103F.48, subd. 7. It is recommended that a county or watershed district consider adopting the methods of determining compliance as provided in BWSR's APO Plan (Part B). A county or watershed District must define buffer width and measurement requirements and alternative practices and related provisions consistent with Minn. Stat. §103F.48, subd. 3. BWSR has the authority to adopt orders under Minn. Stat. §103B.101 and county enforcement authority is pursuant to Minn. Stat. Chapter 394, and watershed district enforcement authority is pursuant to Minn. Stat. Chapter 103D, which is in addition to any other official control or authority available to BWSR, counties and watershed districts.

### B. Administrative Penalty Order (APO) Provisions

A county or watershed district that chooses to use the APO authority granted in Minn. Stat. §103B.101, subd. 12a and Minn. Stat. §103F.48, subd. 7 must adopt a plan consistent with the plan adopted by BWSR (see Minn. Stat. §103F.48, subd. 7(c)). Part A provides guidance to a county or watershed district that elects to use APOs to enforce the riparian protection and water quality practices requirements of Minn. Stat. §103F.48 and can help to determine whether its APO plan is consistent with BWSR's Plan.

#### 1. Corrective Action Notice

Upon receipt of an SWCD notification of noncompliance, the county or watershed district sends the landowner a corrective action notice that:

- (a) Includes a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48;
- (b) Provides a timeline for the landowner to comply with the notice; and
- (c) Includes a statement that a landowner's failure to respond to this notice will result in the assessment of financial penalties.

The county or watershed district may send the landowner a combined corrective action notice and APO as provided in item 2 so long as the combined notice/APO includes all the required elements of both.

The county or watershed district may exercise its judgment by also naming a tenant or other person with control over that part of the property subject to riparian protection and water quality practices requirements, as a responsible party. The county or watershed district may deliver or transmit the corrective action notice by any means reasonably determined to reach the landowner, and it is recommended to document receipt. However, a failure to document receipt will not preclude the county or watershed district from demonstrating receipt or knowledge of the corrective action notice in an enforcement proceeding. The county or watershed district must send a copy of the notice to the SWCD.

At any time, the landowner may provide documentation of compliance to the county or watershed district. In addition, the landowner may supply information in support of a request to modify a corrective action or the timeline for compliance. On the basis of any such submittal or at its own discretion, the county or watershed district, in writing, may modify the corrective action notice or timeline for compliance, and will deliver or transmit the modified corrective action notice and timeline in accordance with this section. Any modification to the notice

or timeline for compliance should be in writing to ensure that the county or watershed district has a copy for its enforcement file. The county or watershed district should determine if the noncompliance has been fully corrected and issue its determination, in writing (as recommended above), to the landowner.

The SWCD may issue a validation of compliance if requested by the landowner and following consultation with the county or watershed district. On county or watershed district receipt of the validation, the corrective action notice will be deemed withdrawn for the purpose of this item, and the subject property will not be subject to enforcement under that section.

A corrective action notice is not considered a final decision and is not subject to appeal under Minn. Stat. §103F.48, subd. 9.

**OPTION:** Counties and watershed districts may establish a local process to appeal a corrective action notice. The time period for compliance and the initiation of a penalty should be put on hold while any appeal is pending for up to 60 days.

**2. APO.** The county or watershed district may issue an APO as provided for in Minn. Stat. §103B.101, subdivision 12a and 12(b) against a landowner that does not comply with a corrective action notice. The APO should be sent with the corrective action notice, alternatively, a combined corrective action notice and APO may be sent so long as the combined notice/APO includes all the elements of both. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO. The penalty schedules shown below in (a) and (b) will be used by BWSR to evaluate county and watershed district APO plan consistency with the Plan adopted by BWSR according to Minn. State. §103F.48, subd. 7

(a) Initial Violation. The penalty range for landowner on the same parcel that has not previously been the subject of an APO issued by the county or watershed district should be based on the following schedule:

- i. \$0 for 11 months after issuance of the corrective action notice;
- ii. \$50 - \$200 per parcel per month for six (6) months (180 days) following the time period in i; and
- iii. \$200 - \$500 per parcel per month after six (6) months (180 days) following the time period in ii.

**OPTION:** counties and watershed districts are recommended to choose a specific penalty amount within the range shown in ii and iii to ensure consistency with the BWSR APO Plan.

Counties and watershed districts may modify the corrective actions and timeline for compliance, in accordance with section B.1, to extend the compliance timeline for a modification that imposes a substantial new action or that would significantly accelerates the completion date for an action.

(b) Repeat violation. The penalty range for a landowner on the same parcel that has previously been the subject of an APO issued by the county or watershed district shall be based on the following schedule:

- i. \$50 - \$200 per parcel per day for 180 days after issuance of the corrective action notice; and
- ii. \$200 - \$500 per parcel per day for after 180 days following the time period in i.

**OPTION:** Counties and watershed districts are recommended to choose a specific penalty amount within the range shown in I and ii to ensure consistency with the BWSR APO Plan.

Counties and watershed districts may modify the corrective actions and timeline for compliance, in

accordance with section B.1, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

(c) Order. The APO should include:

- i. The facts constituting a violation of the riparian protection and water quality practices requirements;
- ii. The statute and/or ordinance or rule that has been violated;
- iii. Prior efforts to work with the landowner to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to be assessed;
- vi. The date that payment of the penalty is due;
- vii. The date by which all or part of the penalty may be forgiven if the landowner complies with the corrective action notice; and
- viii. The landowner or his/her agent or operators' right to appeal the APO.

All or part of the penalty may be forgiven based on the correction of the noncompliance by the landowner by the date specified in the APO. If part or all of the penalty is forgiven, the county or watershed district are recommended to document the reasons and the amount of the penalty that has been forgiven.

A copy of the issued APO must be sent to the SWCD and BWSR.

According to Minn. Stat. §103F.48, subd. 9 an APO that is not appealed to the executive director of BWSR within 30 days of receipt by the landowner or his/her agent or operator is final.

(d) Administrative Penalty Order Procedures

i. Statute of limitations. According to Minn. Stat. §541.07, subd. 2 (2), the county or watershed district has two years in which to commence an administrative penalty order action after the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations for which data must be gathered, field investigations must be completed and/or modeling must be performed will require adequate time to complete the work and communicate with the landowner involved.

ii. Compliance verification. Once a landowner has submitted written evidence of correction of the violation, compliance must be verified. The county or watershed district should:

- Review and evaluate all information related to the APO to determine if the violation has been corrected;
- Verify compliance by a site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and
- Document compliance verification.

The county or watershed district may consult with the SWCD when conducting a compliance verification.

iii. Right to appeal. Minn. Stat. §103F.48, subdivision 9, establishes the rights and procedures for a landowner or his/her agent or operator to appeal an APO issued for a violation of the riparian

protection and water quality practices requirements. A landowner or his/her agent or operator may appeal, in writing, the terms and conditions of an APO issued by a county or watershed district within 30 days of receipt of the APO. The appealing party must provide a copy of the APO that is being appealed, the basis for the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or electronically, to the Executive Director of BWSR. At the discretion of the Executive Director, APOs for the same or similar violations on a parcel may be combined and addressed as a single appeal. The Executive Director will review the appeal and supporting evidence and issue a decision within 60 days of receipt of the appeal. The Executive Director's decision is appealable to the Minnesota Court of Appeals pursuant to Minn. Stat. §14.63 to 14.69. The penalty shall not accrue while the appeal is pending.

iv. Penalty due. Unless the landowner or his/her agent or operator appeals the APO within 30 days of receipt of the APO, the penalty is due and payable to the county or watershed district as specified in the APO. If the landowner or his/her agent or operator submits written evidence within 30 days of the date specified in the APO, which may include a validation of compliance issued by the SWCD, that the violation was corrected, and the county or watershed district verify compliance, then the penalty will be payable based on the date the landowner or his/her agent or operator submitted the written evidence of compliance.

However, if the county or watershed district determines the violation was not fully corrected, the landowner or his/her agent or operator has 20 additional days to pay the penalty after receipt of a letter of determination from the county or watershed district that the violation has not been fully corrected, or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO.

v. Referral for collection of penalty. All penalties assessed under an APO must be paid by the landowner within the specified time and made payable to the county or watershed district. Any penalty not received in the specified time may be collected by any lawful means by the county or watershed district.

vi. Reporting and documentation. Effective compliance reporting and documentation will ensure that proper enforcement action is taken, and that a record is maintained of these actions. When the county or watershed district identifies a violation of the riparian protection and water quality practices requirements, staff should follow record keeping procedures to assess and document the following to the extent known or available:

- Cause of the violation;
- Magnitude and duration of the violation;
- Whether the violation presents an actual or imminent risk to public health and safety, or to the environment or the natural resources of the state;
- Past violations;
- Efforts by the SWCD, county, watershed district or BWSR to assist the landowner to become compliant, including written and oral communications with the landowner; and
- Past and present corrective action efforts by the landowner.

## Part B: BWSR Administrative Penalty Order Plan

### I. Buffer Requirements

#### 1. Buffer width

Except as provided under section I.5, a landowner must maintain a buffer area on a water shown on the buffer protection map as follows:

- A. For waters shown on the buffer protection map requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer as measured according to subsection 2, except as provided in section I.5.
- B. For waters shown on the buffer protection map requiring a sixteen and a half (16.5) foot minimum width buffer as measured according to subsection 2 except as provided in subsection I.5.

#### 2. Buffer Measurement

- A. The measurement of the required buffer on land adjacent to a water requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer must be from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level.
- B. The measurement of the required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer must be in the same manner as for measuring the perennial vegetation buffer strips under Minn. Stat. §103E.021.

#### 3. Use of Buffer Area

A buffer may not be used for cultivation farming but may be grazed, mowed, hayed or otherwise harvested, provided permanent growth of perennial vegetation is maintained, except as provided in subsection 4.G and section I.5.

#### 4. Exemptions

- A. The requirement of section I.1 does not apply to land that is:
  - i. Enrolled in the federal Conservation Reserve Program;
  - ii. 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 provide in an approved local government shoreland ordinance;
  - iii. Covered by a road, trail, building or other structures; or
  - iv. Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under Minnesota Rules, chapter 7090, and the adjacent waterbody is provided riparian protection;
  - v. Part of a water-inundation cropping system; or

- vi. In a temporary nonvegetated condition due to drainage tile installation and maintenance, alfalfa or other perennial crop or plant seeding, or a construction or conservation project authorized by a federal, state or local government unit.

B. The landowner claiming the applicability of an exemption to their parcel is responsible for identifying the exemption and maintaining evidence of eligibility to demonstrate qualification for the exemption.

## 5. Alternative practices

The landowner or his/her agent or operator of land that is used for cultivation farming may demonstrate compliance with section I.1 by establishing and maintaining an alternative riparian water quality practice(s), or combination of structural, vegetative, and management practice(s), based on the Natural Resources Conservation Service Field Office Technical Guide, common alternative practices adopted and published by BWSR, other practices approved by BWSR, or practices based on local conditions approved by the local SWCD that are consistent with the Field Office Technical Guide which provide water quality protection comparable to the water quality protection provided by a required buffer as defined in subsections I.1 to I.3.

## II. Compliance Determinations

Compliance on each parcel will be determined based on the establishment and maintenance of buffers and/or alternative practices.

Compliance status will be determined by BWSR:

- A. On a parcel basis as identified by a unique locally defined property identification number or description; and
- B. The compliance status of each bank, or edge of an applicable water body on an individual parcel will be determined independently.

### 1. Notification of Noncompliance

When BWSR observes potential noncompliance or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the SWCD to determine the appropriate course of action to confirm compliance status. This may include communication with the landowner or his/her agents or operators, communication with the shoreland management authority, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of this coordination, the SWCD may issue a Notification of Noncompliance to BWSR. BWSR compliance or enforcement actions under Minnesota Statutes §103F.48 and section III will be based on an SWCD issued Notice of Noncompliance.

At any time, the landowner or his/her agents or operators may provide documentation of compliance to the SWCD. The SWCD should evaluate the documentation, or review the buffer and/or alternative practices to determine if the parcel is in compliance and issue its determination in writing to the landowner or his/her agents or operators and BWSR. The SWCD may issue a Validation of Compliance if applicable and requested by the landowner or his/her agents or operators. The SWCD must send a copy of a Notification of Noncompliance to BWSR.

## III. Enforcement and Penalty Procedures

### 1. Corrective Action Notice

Upon receipt of an SWCD notification of noncompliance, BWSR will send the landowner or his/her agents or operators a corrective action notice that will:

- (a) Include a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48;
- (b) Provide a timeline for complying with this notice; and
- (c) Include a statement that failure to respond to this notice will result in the assessment of financial penalties.

The landowner may be sent a combined corrective action notice and APO as provided in item 2 so long as the combined notice/APO includes all the elements of both.

BWSR may deliver or transmit the corrective action notice by any means reasonably determined to reach the landowner or agents or operators, which will document receipt. However, a failure to document receipt will not preclude BWSR from demonstrating receipt or knowledge of the corrective action notice in an enforcement proceeding under section III. BWSR will also send a copy of the notice to the SWCD.

At any time, the landowner or his/her agents or operators may provide documentation of compliance to BWSR. In addition, the landowner or his/her agent or operator may supply information in support of a request to modify a corrective action or the timeline for compliance. On the basis of any such submittal or at its own discretion, BWSR, in writing, may modify the corrective action notice or timeline for compliance, and will deliver or transmit the modified corrective action notice and timeline in accordance with this section. BWSR should determine if the noncompliance has been fully corrected and issue its determination as provided in section III. 3B, in writing, to the landowner or his/her agent or operator.

The SWCD may issue a validation of compliance if requested by the landowner or his/her agent or operator and following consultation with BWSR. On BWSR receipt of the validation the corrective action notice will be deemed withdrawn for the purpose of section 2.0, and the subject property will not be subject to enforcement under that section.

A corrective action notice is not considered a final decision and is not subject to appeal under Minn. Stat. §103F.48, subd. 9.

## **2. BWSR's Use of Administrative Penalty Orders.**

### A. Enforcement by BWSR

BWSR's authority to enforce the riparian protection and water quality practices requirements of Minn. Stat. §103F.48 by APO is pursuant to Minn. Stat. §103B.101, subdivision 12(a) and (b).

### B. BWSR's enforcement team

Prior to issuance of an APO, BWSR staff may establish an enforcement team to review the specific facts and develop an APO.

### C. Amount of penalty

BWSR staff may issue an APO, as provided for in Minn. Stat. §103B.101, subd. 12a against a landowner or his/her agent or operator that does not comply with a corrective action notice. The APO should be sent

with the corrective action notice, alternatively, a combined corrective action notice and APO may be sent so long as the combined notice/APO includes all the elements of both. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO.

(1) Initial Violation. The penalty for a landowner or his/her agent or operator on the same parcel that has not previously been the subject of an APO issued by BWSR shall be based on the following schedule:

- (a) \$0 for 11 months after issuance of the corrective action notice;
- (b) \$100 per parcel per month for six (6) months (180 days) following the time period in (a); and
- (c) \$500 per parcel per month after six (6) months (180 days) following the time period in (b).

BWSR may modify the corrective actions and timeline for compliance, in accordance with section III.1, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

(2) Repeat violation. The penalty for a landowner or his/her agent or operator on the same parcel that has previously been the subject of an APO issued by BWSR shall be based on the following schedule:

- (a) \$100 per parcel per day for 180 days after issuance of the corrective action notice; and
- (b) \$500 per parcel per day after 180 days following the time period in (a).

BWSR may modify the corrective actions and timeline for compliance, in accordance with section III.1, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

D. Order. The APO should include:

- i. The facts constituting a violation of the riparian protection and water quality practices requirements;
- ii. The statute and/or Board Buffer program document that has been violated;
- iii. Prior efforts to work with the landowner or his/her agent or operator to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to be assessed;
- vi. The date that payment will be due;
- vii. The date by which all or part of the penalty may be forgiven if the landowner or his/her agent or operator has/have complied with the corrective action notice; and
- viii. The landowner or his/her agent or operator's right to appeal the order.

Pursuant to §103F.48, subd. 7(d) all or part of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the APO by the landowner or his/her agents or operators. If part or all of the penalty is forgiven, the reasons and the amount of the penalty that has been forgiven will be documented in the enforcement file.

A copy of the APO should be sent to the SWCD.

According to Minn. Stat. §103F.48, subd. 9 an APO that is not appealed to the executive director of BWSR within 30 days of receipt by the landowner or his/her agent or operator is final.

### 3. Administrative Penalty Order Procedures

A. Statute of limitations. According to Minn. Stat. §541.07, subd. (2), BWSR has two years in which to commence an APO action after the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations for which data must be gathered, field investigations must be completed and/or modeling must be performed will require adequate time to complete the work and communicate with the person(s) involved.

B. Compliance verification. Once a landowner or his/her agents or operators has/have submitted written evidence of correction of the violation, compliance must be verified. BWSR should:

- Review and evaluate all information related to the APO to determine if the violation has been corrected;
- Verify compliance by site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and
- Document compliance verification.

BWSR may consult with the SWCD when conducting a compliance verification.

C. Right to appeal. Minn. Stat. §103F.48, subdivision 9, establishes the rights and procedures for appeal of an APO issued for a violation of the riparian protection and water quality practices requirements. A landowner or his/her agent or operator may appeal, in writing, the terms and conditions of an APO issued by a county, watershed district or BWSR within 30 days of receipt of the APO. The appealing party must provide a copy of the APO that is being appealed, the basis for the appeal and any supporting evidence. The appeal may be submitted personally by U.S. mail, or electronically, to the Executive Director of BWSR. At the discretion of the executive director, APOs for the same or similar violations on a parcel may be combined and addressed as a single appeal. The Executive Director will review the appeal and supporting evidence and issue a decision within 60 days of receipt of the appeal. The Executive director's Decision is appealable to the Minnesota Court of Appeals pursuant to Minn. Stat. §14.63 to 14.69. The penalty shall not accrue while the appeal is pending.

D. Penalty due. Unless the landowner or his/her agents or operators appeals the APO within 30 days of receipt of the APO, the penalty is due and payable to BWSR as specified in the APO. If the landowner or his/her agents or operators submits written evidence within 30 days of the date specified in the APO, which may include a validation of compliance issued by the SWCD, that the violation was corrected, and BWSR verifies compliance, then the penalty will be payable based on the date the landowner submitted the written evidence of compliance. However, if BWSR determines the violation was not fully corrected, the landowner or his/her agents or operators has 20 additional days to pay the penalty after receipt of the letter of determination from BWSR that the violation has not been fully corrected, or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO.

E. Referral for collection of penalty. All penalties assessed under an APO must be paid by the landowner or his/her agent or operator within the specified time and made payable to BWSR. Penalties that have not been paid by the landowner or his/her agent or operator within 12 months of the date specified in the APO will be referred to the Minnesota Department of Revenue for collection. Any penalty or interest not received in the specified time may be collected by any lawful means.

F. Reporting and documentation. Effective compliance reporting and documentation is strongly recommended to ensure that proper enforcement action is taken, and that a record is maintained of these actions in the appropriate enforcement file. When BWSR identifies a violation of the riparian protection and water quality practices requirements, BWSR staff should follow record keeping procedures to assess and document the following to the extent known or available:

- Cause of the violation;
- Magnitude and duration of the violation;
- Whether the violation presents an actual or imminent risk to public health and safety, or the natural resources of the state;
- Past violations;
- Efforts by the SWCD, county, watershed district or BWSR to assist the landowner or agent or operator to become compliant, including written and oral communications with the landowner or agent or operator; and
- Past and present corrective action efforts by the landowner or agent or operator.

## Definitions

1. "**BWSR**" means the Board of Water and Soil Resources.
2. "**Buffer**" means an area consisting of perennial vegetation, excluding invasive plants and noxious weeds.
3. "**Buffer protection map**" means the buffer map established and maintained by the commissioner of the Minnesota Department of Natural Resources published in 2017, and as subsequently amended, that is available on the department of natural resources website.
4. "**Commissioner**" means the commissioner of the Minnesota Department of Natural Resources.
5. "**Cultivation farming**" means practices that disturb root or soil structure or that impair the viability of perennial vegetation.
6. "**Landowner**" means the fee title landowner or agent or operator.
7. "**Normal water level**" means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.
8. "**Public waters**" has the meaning given in Minn. Stat. §103G.005, subdivision 15. The term public waters as used in this ordinance applies to waters that are on the public waters inventory as provided in Minn. Stat. §103G.201.