

Chapter 25

Riparian Buffers

25.01 Title and Statutory Authorization. The standards of this Chapter were adopted pursuant to the authorization and polices contained in Minn. Stat. § 103F.48 and the zoning enabling legislation in Chapter 394 of the Minnesota Statutes.

25.02 Purpose and Intent. It is the purpose and intent of Wabasha County to:

- (1) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
 - (a) Protect state water resources from erosion and runoff pollution;
 - (b) Stabilize soils, shores, and banks; and
 - (c) Protect or provide riparian corridors.
- (2) Coordinate the implementation and enforcement of the water resources riparian protection requirements of Minn. Stat. § 103F.48 with the Shoreland management rules and ordinances adopted under the authority of Minnesota Statute § 103F.201 to 103F.227 and the management of public drainage systems established under Chapter 103E of the Minnesota Statutes where applicable; and
- (3) Provide efficient and effective direction to landowners and protection of surface water quality and related land resources.

25.03 Definitions. The definitions below shall apply to this chapter. Definitions in Chapter 2 of this Ordinance shall also apply to this chapter except as they may be in conflict, in which case the definitions as below shall prevail.

- (1) Administrative Penalty Order. The Administrative Penalty Order issued pursuant to Minn. Stat. § 103F.48, subd. 7 and Minn. Stat. § 103B.101, subd. 12a.
- (2) Alternative Riparian Water Quality Practice. As identified as Chapter 25.06(5) of this Ordinance.
- (3) Board. The Wabasha County Board of Commissioners.
- (4) Buffer. 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.
- (5) Buffer Protection Map. The buffer maps established and maintained by the Commissioner of Natural Resources. Buffer maps are available on the Department of Natural Resources website.

- (6) BWSR. The Minnesota Board of Water and Soil Resources.
- (7) Corrective Action Notice or CAN. Notice issued to a landowner stating noncompliance with the Buffer Law as per Chapter 25.08 of this Ordinance.
- (8) County. Wabasha County and its employees, designees or representatives.
- (9) Cultivation Farming. 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.
- (10) Drainage Authority. The board or joint county drainage authority having jurisdiction over a drainage system or project.
- (11) Landowner. The holder of the fee title, the holder's agents or assigns, any lessee, licensee, or operator of the real property, or any other party conducting farming activities on or exercising control over the real property. It shall include all "land occupiers," as defined by Minn. Stat. § 103F.401, subd. 7 as "a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of lands as owner, lessee, or otherwise."
- (12) Local Water Management Authority. A watershed district, metropolitan water management organization, or county operating separately or jointly in its role as local water management authority under Chapter 103B or 103D of the Minnesota Statutes.
- (13) Normal Water Level. The water 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.
- (14) Operator. The person who works the land for agricultural purposes and makes day-to-day management decisions. It shall include the owner, hired manager, cash tenant, share tenant, and/or a partner. If land is rented or worked on shares, the tenant or renter is the operator.
- (15) Parcel. A tract, lot, and piece or parcel of land, 40 acre tracts or portions thereof, contiguous quantity of land in the possession of, owned by, or recorded as the property of, the same claimant or person.
- (16) Perennial Vegetation. Vegetation present at all seasons of the year.
- (17) Public Drainage Authority. As defined in Minnesota Statute §103E.005, Subd. 12.
- (18) Public Drainage System. 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.

- (19) Soil and Water Conservation District or SWCD. The Wabasha Soil and Water Conservation District.
- (20) Validation of Compliance. A notice issued by SWCD that validates a site(s) is compliant and that said validation is good as long as all practices identified/documented continue to be in place and substantially in the condition identified at the time of issuance. Said notice shall be in recordable form.

25.04 General Provisions. The following items are general provisions that apply to this chapter.

- (1) Severability. If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.
- (2) Data Sharing/Management. The County may enter into an arrangement with the Wabasha SWCD, a watershed district if applicable, BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this ordinance. The County will manage all such data in accordance with the Minnesota Government Data Practices Act and any other applicable laws.
- (3) Delegation of Enforcement. Nothing herein shall prevent the County from entering into an agreement with any other entity, authorized under statutes section 103F.48 to enforce buffer requirements for the enforcement of buffer requirements within its jurisdiction according to this ordinance or other properly adopted enforcement rule.
- (4) Drainage System Acquisition and Compensation for Buffer. Nothing in this chapter shall prevent the acquisition and compensation of grass buffers on public drainage systems pursuant to Minnesota Statutes Chapter 103E.
- (5) Notice. Any notice or other communication to be provided herein shall be directed to the Landowner whose name and address appears on the County's Property Tax Records and listed as the taxpayer. Notice on said Landowner shall be considered sufficient notice to all those who may be considered a Landowner as defined in Chapter 25.03(11).

25.05 Jurisdiction. The provisions of this chapter apply to all waters, including public drainage systems for which the County is not the drainage authority under Chapter 103E of the Minnesota Statutes, shown on the buffer protection map, where another enforcement authority has elected enforcement jurisdiction.

25.06 Buffer Provisions. The following standards apply to all areas of Wabasha County required to have a riparian buffer.

- (1) Buffer Width. Except as provided in Chapter 25.06(4) or Chapter 25.06(5), a landowner owning property adjacent to a water body identified on the Buffer Protection Map must establish and maintain a buffer area as follows:

- (a) For waters shown on the Buffer Protection Map requiring a fifty (50) foot width buffer, the buffer width will be fifty (50) foot average and thirty (30) foot minimum width as provided in Minn. Stat. § 103F.48, subd. 3, unless a greater width is required in Chapter 13 of the Wabasha County Zoning Ordinance.
 - (b) For waters shown on the Buffer Protection Map requiring a sixteen and a half (16.5) foot minimum width buffer, the buffer width will be sixteen and a half (16.5) feet as provided in Minn. Stat. § 103F.48, subd. 3, unless a greater width is required in Chapter 13 of the Wabasha County Zoning Ordinance.
- (2) Measurement. The measurement of the required buffer on land adjacent to a water requiring a fifty (50) foot 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 as provided in Minn. Stat. 103F.48, sub 3(c). 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 vegetated grass strip under Minn. Stat. 103E.021.
- (3) Use of Buffer Area. A buffer, as defined in this ordinance, may not be put to any use that would remove or prevent the permanent growth of perennial vegetation, such as cultivation farming, except as provided in Chapter 25.06(4) and Chapter 25.06(5).
- (4) Exemptions. The requirements of this Chapter does not apply to land that is exempted under Chapter 103F.48 , Subd. 5, Minn. Stats.
- (5) Alternative Practices. As provided in Minn. Stat. 103F.48, sub 3(b) an owner of land that is used for cultivation farming may demonstrate compliance by establishing and maintaining an alternative riparian water quality practice(s), or combination of structural, vegetative, and management practice(s) which provide water quality protection comparable to the water quality protection provided by a required buffer as defined in this Chapter, based on:
- (a) The Natural Resources Conservation Service Field Office Technical Guide;
 - (b) Common alternative practices adopted and published by BWSR;
 - (c) Practices based on local conditions approved by the SWCD that are consistent with the Natural Resources Conservation Service Field Office Technical Guide;
 - (d) Other practices adopted by BWSR.

25.07 Compliance Determination. Compliance with the buffer requirements set forth in this Chapter will be determined by the SWCD by parcel. The compliance status of each bank or edge of a waterbody on a parcel will be determined independently and will proceed as follows:

- (1) When the County observes a 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 operator, 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 the County. If the SWCD does not issue such a notification, the County will not pursue a compliance or enforcement action under Minnesota Statutes 103F.48 or per this Chapter.

- (2) The landowner or operator may provide documentation of compliance to the SWCD. The SWCD will 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 and/or operator. The SWCD may issue a validation of compliance if applicable and requested by the landowner or operator. A validation of compliance must also be sent to the County. The SWCD must send a copy of a noncompliance determination to the County and BWSR.

25.08 Corrective Action.

- (1) Corrective Action Notice. On receipt of a notification of noncompliance, the County will issue the landowner of record a corrective action notice that will include all of the following:
 - (a) A list of corrective actions needed to come into compliance with the requirements of Minn. Stat, 103F.48.
 - (b) A time line for compliance.
 - (c) A compliance standard against which it will judge the corrective action.
 - (d) A statement that failure to respond to the Notification of Noncompliance may result in the assessment of criminal charges or the issuance of administrative penalties. (The County may send the landowner a combined Corrective Action Notice and APO, so long as the combined Corrective Action Notice/APO includes all the requisite elements of both.)
- (2) Documentation of Compliance. At any time after receipt of a Corrective Action Notice, the landowner may provide documentation of compliance to the County. In addition, the landowner may supply information to the County or the SWCD 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 Wabasha County Zoning/Environmental Services Department may make a written modification to the Corrective Action Notice or timeline for compliance. The County, upon review and notification by the SWCD, should also make a written determination documenting whether the noncompliance has been fully corrected. Any such modification of a compliance determination will be served on the landowner in the manner provided for in Chapter 25.08 of this Ordinance. The County shall provide the SWCD and BWSR with a written copy of any modification made to the Corrective Action Notice.
- (3) Validation of Compliance. At any time after receipt of a Corrective Action Notice, the landowner may request a written Validation of Compliance from the SWCD and submit evidence in support of that request to the SWCD. After evaluating any evidence submitted by the landowner, the SWCD may issue a written Validation of Compliance. Upon receipt of a written Validation of Compliance from the SWCD, the Corrective

Action Notice will be deemed withdrawn for the purpose of Chapter 25.09 of this Ordinance, and the subject property will not be subject to enforcement under that section.

- (4) Transmission of Notice. The County shall transmit the corrective action notice by either personal service to the landowner or by depositing the same in the U.S. Mail. If service is made by U.S. mail, the document is deemed received three business days after the notice was placed in the U.S. mail. Failure of actual receipt of a corrective action notice that has either been personally served or served by depositing the same in the U.S. Mail shall not be deemed a defense in an enforcement proceeding under this Ordinance. The County shall also send a copy of the Notice to the SWCD and BWSR.

25.09 Enforcement. The County may, at its own discretion, elect to pursue the failure to comply with a Corrective Action Notice as follows:

- (1) District Court. Enforcement for failure to comply with a Corrective Action Notice issued under this Ordinance may be pursued through the District Court. Each violation shall be punishable as defined by law.
- (2) Administrative Penalty Order. The County may issue an Administrative Penalty Order as provided for in Minn. Stat. § 103F.48, subd. 7(c) and 103B.101, subd. 12a to a landowner who has failed to take the corrective action set forth in the Corrective Action Notice.
- (3) Statute of Limitations. Any criminal enforcement action undertaken pursuant to this Ordinance must be undertaken within two years after the alleged violation was discovered or reasonably should have been discovered by the SWCD. According to Minn. Stat. § 541.07, the County has two (2) years in which to commence an APO action after the date the violation is discovered.

25.10 Administrative Penalty Order Provisions.

- (1) Initial Violation. The penalty for a landowner on a parcel that has not previously been issued a corrective action notice by the County shall be:
 - (a) \$0 for the 11 months after issuance of the Corrective Action Notice;
 - (b) \$100 per parcel per month for the first 6 months (180 days) following the time period identified in Chapter 25.10(1)(a); and
 - (c) \$500 per parcel per month following the time period identified in Chapter 25.10(1)(b).
- (2) Repeat Violation. The penalty for a landowner on a parcel that has previously been issued a corrective action notice by the County shall be:
 - (a) \$100 per parcel per day for the first 6 months (180 days) after issuance of the subsequent Corrective Action Notice; and
 - (b) \$500 per parcel per day following the time period in Chapter 25.10(2)(a).
- (3) Ongoing Penalty Assessment. Any penalty assessed under this section shall continue until the corrective action notice has been satisfied.

- (4) APO Requirements. For the Administrative Penalty Order to be effective it must be served on the landowner together with a copy of the Corrective Action Notice or alternatively, the County may serve the landowner with a combined Corrective Action Notice and Administrative Penalty Order so long as the combined Corrective Action Notice/Administrative Penalty Order includes all the elements of both. Service is effective either by personal service or by depositing the documents set forth herein in the U.S. Mail. Any penalty assessed in the Administrative Penalty Order shall continue to accrue until the violation is corrected as provided in the Corrective Action Notice and Administrative Penalty Order. To be valid, the APO shall include, at a minimum:
- (a) The facts constituting a violation of the riparian protection and water quality practices requirements set forth in this Ordinance or Minn. Stat. § 103F.48;
 - (b) The specific statute and/or ordinance section (s) that has/have been violated;
 - (c) A written description of prior efforts to work with the landowner to resolve the violation;
 - (d) The amount of the penalty to be imposed;
 - (e) The date the penalty will begin to accrue;
 - (f) The date that payment of the penalty is due;
 - (g) The date by which all or part of the penalty may be forgiven if the landowner has/have complied with the Corrective Action Notice; and
 - (h) A statement of the landowner's right to appeal the APO.
- (5) Forgiveness of Penalty. Fifty percent of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the APO by the landowner as provided in Minnesota Statute §103F.48, subdivision 7(d).
- (6) Copy of APO. A copy of the APO must be sent to the SWCD and BWSR.
- (7) Compliance Verification. Once a landowner has provided notice and submitted written evidence of correction of the violation set forth in the Notice of Noncompliance, compliance must be verified. The County will refer the landowner's evidence and notices to the SWCD to:
- (a) Review and evaluate all information related to the Corrective Action Notice or APO to determine if the violation has been corrected;
 - (b) Verify compliance by site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case; and
 - (c) Document compliance verification.
- (8) Right to Appeal. Minnesota Statute §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 the County 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 the 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 Appeal pursuant to Minnesota Statute §14.63 to 14.69. The penalty shall not accrue while the appeal is pending.

- (9) Penalty Due. Unless the landowner appeals the APO as provided in this Ordinance, the penalty specified in the APO becomes immediately due and payable to the County as set forth in the APO. If however, the landowner submits written documentation that the violation(s) has/have been corrected prior to the time the penalty becomes due and payable, the County shall verify compliance and adjust the penalty equal to the amount as listed in this Ordinance based on the documentation submittal date. Written documentation of compliance may include a written Validation of Compliance issued by the SWCD.

However, if the County determines the violation was not fully corrected, the County shall notify the landowner by sending a written letter of determination to the landowner via U.S. Mail. Any determination sent by U.S. Mail shall be deemed received three (3) business days after the letter of determination has been deposited in the U.S. Mail. The landowner shall have an additional twenty (20) days after receipt of the determination to pay the penalty 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.

- (10) Referral for Collection of Penalty. All penalties and interest assessed under an APO must be paid by the landowner within the time specified in this section. All payments shall be made payable to the County. Any penalty or interest not received in the specified time may be collected by the County using any lawful means.
- (11) Reporting and Documentation. The County shall maintain the following records for any potential violation of the riparian protection and water quality practices requirements. Said records shall include but are not limited to the following:
- (a) The cause of the violation;
 - (b) The magnitude and duration of the violation;
 - (c) Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
 - (d) Documentation showing whether the violation has the potential to harm the natural resources of the state;
 - (e) A record of past violations;
 - (f) Efforts by the Wabasha SWCD, County, Watershed District if applicable, or BWSR to assist the responsible party or parties to become compliant, including written and oral communications with the responsible party or parties; and
 - (g) Past and present corrective action efforts by the responsible party or parties.
- (12) Appeals Process. The Executive Director of BWSR's decision on appeal of an APO in accordance with this Chapter is appealable to the Minnesota Court of Appeals in

accordance with Minn. Stat. §§ 14.63 to 14.69. The penalty associated with the APO shall not accrue while an appeal is pending.

25.11 Nonconformities. Parcels with other nonconforming land uses must still comply with all provisions of Chapter 103F, 48 Minn. Stats. and this Chapter. All landowners must comply with the riparian buffer provisions of this Chapter regardless of whether or not a riparian buffer was in place prior to the adoption of this Chapter.