

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJC
6/18/92

RULE REVIEW CHECKLIST

File No. 1921 Docket No. 05000900986
DATE RECEIVED 6-17-92 ADOPTED W/O HEARING
REVIEW DATE 6-26-92 EMERGENCY RULE
DUE DATE 7-1-92 TO REVISOR ON 6-18-92
(DIS)APPROVED 7/1/92 REVISOR (DIS)APPROVED
WITHDRAWN FILED W/SEC. OF STATE 7-1-92
RETURNED TO AGENCY 7-1-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
Nov 13, 1989 Date published in State Register
Comments

✓ Petition for Adoption of a Rule

✓ Board's Authorizing Resolution missing have fax need final 6-18-92 left message
Dec 18, 1991 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
103B.101 subd 7 Statutory Authority 103B.211 subd 1, 103B subd 6 subd 10, 103B subd 14
✓ Small Business Statement
Expenditure of public money 103B.227 subd 3 statement
3-20-92 Signature

Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
N/A Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
March 30, 1992 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
April 6, 1992 Date 30/25 days before adoption

180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) not mandatory may adopt rules amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
May 27, 1992 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
May 27, 1992 Date

N/A Written Requests, Submissions or Comments

✓ Declaration of Attorney
Bill Clapp Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

STATE OF MINNESOTA

Office of the Attorney General

TO : BRUCE SANDSTROM
Minnesota Board of Water and Soil Resources
155 South Wabasha Street, Suite 104
St. Paul

DATE : July 1, 1992

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Rule Relating to Waters; Metropolitan Area Local Water Management

The above-referenced rule has been approved as to its legality by the Attorney General on July 1, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

Enclosure

cc: A. W. Clapp, III
William Brown, Chief Judge
MaryAnn Hruby

MJC:jj,rules.ay0

Board of Water and Soil Resources

Adopted Permanent Rules Relating to Waters; Metropolitan Area Local Water Management

Rules as Adopted

8410.0010 SCOPE.

Subpart 1. **Application.** Upon adoption, parts 8410.0010 to 8410.0180 apply to the general administration of metropolitan watershed management activities and to amendments to existing plans made after January 1, 1995. If no plan has been submitted to the board by the effective date of parts 8410.0010 to 8410.0180, any plan thereafter submitted must be in compliance with parts 8410.0010 to 8410.0180. A watershed management organization must amend its plan consistent with parts 8410.0010 to 8410.0180 and submit amendments to the board according to its amendment schedule and amendment procedures outlined in part 8410.0140, but not later than ten years from the date of initial plan approval.

Subp. 2. **Failure to implement plans.** When the board determines that a plan is not being properly implemented under an action initiated according to part 8410.0180, and there is reason to believe that an improved plan would lead to improved water management, the board may direct the responsible authorities to develop an amended plan within a reasonable time frame. In making this determination, the board must consider items including, but not limited to:

A. when the plan was approved and adopted;

B. the status of local plan development and adoption;

C. the scope and anticipated costs to amend;

D. the availability of funds; and

E. the potential short- and long-term adverse impacts on the natural resources of the affected watershed.

8410.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in

Minnesota Statutes, section 103B.205, apply to parts 8410.0010 to 8410.0180.

Subp. 2. **Board.** "Board" means the Minnesota Board of Water and Soil Resources created by Minnesota Statutes, section 103B.101.

Subp. 3. **Capital improvement.** "Capital improvement" means a physical improvement that is not directed toward maintenance of an in-place system during its life expectancy.

Subp. 4. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council as created by Minnesota Statutes, section 473.123.

Subp. 5. **Flooding problem.** "Flooding problem" means a flooding problem that has been identified as a problem by the watershed management organization or local unit of government.

Subp. 6. **Groundwater plan.** "Groundwater plan" means a county plan adopted under Minnesota Statutes, section 103B.255.

Subp. 7. **Local comprehensive plan.** "Local comprehensive plan" has the meaning given "comprehensive plan" in Minnesota Statutes, section 473.852, subdivision 5.

Subp. 8. **Local government unit or unit.** "Local government unit" or "unit" has the meaning given it in Minnesota Statutes, section 473.852, subdivision 7.

Subp. 9. **Metropolitan Water Management Act.** "Metropolitan water management act" has the meaning given it in Minnesota Statutes, sections 103B.201 to 103B.255.

Subp. 10. **Minor plan amendments.** "Minor plan amendments" means items such as recodification of the plan, revision of a procedure meant to streamline administration of the plan, clarification of the intent of a policy, the inclusion of additional data not requiring interpretation, or any other action that will not adversely affect a local unit of government or diminish a water management organization's ability to achieve its plan's goals or implementation program.

Subp. 11. **Minor watershed unit.** "Minor watershed unit" means each of the approximately 5,600 minor watershed units delineated on the state watershed boundaries map prepared under

the requirements of Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).

Subp. 12. **Metropolitan Urban Service Area or area.** "Metropolitan Urban Service Area" or "area" has the meaning given on maps prepared by the Metropolitan Council. The latest version of the map identifying the area is incorporated by reference and is subject to periodic change. The latest version of the map identifying the area is available from the state law library through the Minitex interlibrary loan system. The area is the seven-county metropolitan area that the council is committed by policy to provide regional planning for sanitary sewer, highway, transit, park, and airport facilities.

Subp. 13. **Natural surface water storage and retention systems.** "Natural surface water storage and retention systems" means public waters and wetlands as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 19.

Subp. 14. **Official controls.** "Official controls" has the meaning given it in Minnesota Statutes, section 473.852.

Subp. 15. **Plan.** "Plan" means the watershed management plan prepared by a watershed management organization or county as required by Minnesota Statutes, section 103B.231, subdivision 1.

Subp. 16. **Plan review authorities.** "Plan review authorities" means the Metropolitan Council, the Department of Health, the Department of Natural Resources, the Pollution Control Agency, the Board of Water and Soil Resources, and counties, cities, towns, and soil and water conservation districts partially or wholly within the watershed management organization as defined in Minnesota Statutes, section 103B.231, subdivisions 7, 8, and 9.

Subp. 17. **Public waters.** "Public waters" means waters of the state identified as public waters under Minnesota Statutes, section 103G.005, subdivision 15.

Subp. 18. **Seven-county metropolitan area.** "Seven-county metropolitan area" means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, excluding the corporate

boundaries of the city of New Prague.

Subp. 19. **Subwatershed unit.** "Subwatershed unit" means a hydrologic area less than the entire area under the jurisdiction of a watershed management organization.

Subp. 20. **Watershed.** "Watershed" means a drainage area with boundaries that are substantially coterminous with those of an aggregation of contiguous minor watershed units possessing similar drainage patterns and that cross the borders of two or more local government units.

Subp. 21. **Watershed district.** "Watershed district" means a district established under Minnesota Statutes, chapter 103D.

Subp. 22. **Watershed management organization or organization.** "Watershed management organization" or "organization" means: (1) a watershed district wholly within the metropolitan area; or (2) a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district that has the characteristics and the authority specified under Minnesota Statutes, section 103B.211. Counties may be watershed management organizations if a joint powers watershed management organization does not perform and the responsibility for plan preparation is deferred to the counties. Lake improvement or conservation districts are not watershed management organizations.

Subp. 23. **Wetlands.** "Wetlands" means waters of the state identified as wetlands under Minnesota Statutes, section 103G.005, subdivision 19.

Subp. 24. **Wetland banking system.** "Wetland banking system" means an accounting system established by a unit of government for the purpose of tracking and managing net losses and gains to wetland values that occur as a result of development.

8410.0030 CONTENT OF JOINT POWERS AGREEMENTS.

Subpart 1. **Requirements.** In addition to a description of any authorities adopted under the content requirements of joint powers agreements as outlined in Minnesota Statutes, section

103B.211, subdivision 1, joint powers agreements establishing a watershed management organization must, at a minimum, contain the following items:

A. a purpose statement consistent with Minnesota Statutes, section 103B.201;

B. a complete legal description defining the boundary of the organization;

C. a requirement to adopt rules of order and procedure;

D. a process for establishing an annual budget and work plan;

E. a formula for determining each member's share of the annual operating budget;

F. a statement of how member appointees are to be compensated;

G. a procedure providing for the establishment of citizen and technical advisory committees or other means of public participation;

H. a section defining the powers and duties of the organization;

I. a section establishing the duties and terms of the officers of the organization;

J. a notification process on the location and time of meetings;

K. a section defining the voting requirements for decision making and capital improvements consistent with Minnesota Statutes, section 103B.211, subdivision 1, paragraph (c);

L. a section outlining meetings to be scheduled at least annually;

M. the process and responsibilities of the organization and its members for filling vacancies consistent with Minnesota Statutes, section 103B.227, subdivisions 1 and 2;

N. the duration of the agreement and a process for dissolution that provides for at least 90 days' notice of the intent to dissolve to the affected counties and the board; and

O. a section defining how the membership will be represented, with the total number of representatives to be at least three.

Subp. 2. **Updating.** Joint powers agreements must be updated if necessary to be in conformance with this chapter no later than January 1, 1993, or one year after adoption of chapter 8410, whichever is later.

Subp. 3. **County membership.** A county may be a member of a joint powers agreement organization when the conditions described in Minnesota Statutes, section 103B.211, subdivision 3, are present.

8410.0040 REMOVAL OF ORGANIZATION REPRESENTATIVES.

A manager of a watershed district or a member of a joint powers board may be removed from the position by the appointing authority before term expiration for violation of a code of ethics of the watershed management organization or appointing authority or for malfeasance, nonfeasance, or misfeasance, after being provided an opportunity for hearing before the appointing authority. Managers holding the position as an elected official who are not reelected, or are serving an indefinite term at the pleasure of the appointing authority, may be removed by the appointing authority at will. A decision of the appointing authority may be appealed to the Board of Water and Soil Resources.

CONTENT OF WATERSHED MANAGEMENT ORGANIZATION PLANS

8410.0050 EXECUTIVE SUMMARY.

Each plan must have a section entitled "Executive Summary." The summary should outline the purpose of the watershed management organization; the membership of the organization's board of managers; the general boundaries of the organization; a brief history of the organization; a summary of the organization's goals, problems, and potential solutions; and the general content of required local plans.

8410.0060 LAND AND WATER RESOURCE INVENTORY.

Subpart 1. **Required.** Each plan must contain an inventory of water resource and physical factors affecting the water resources based on existing records and publications. If data publications and maps are available at a convenient central location, they may be included by reference. The plan must include a brief summary of the data and must identify where the publication can be obtained. At a minimum, the information in subparts 2 to 11 must be included in the plan. Subparts 2 and 4, item E, may be in the local plan instead of the watershed management organization plan.

Subp. 2. **Precipitation.** Each plan must include precipitation data normally used in the seven-county metropolitan area for hydrologic and hydraulic design.

Subp. 3. **General geology and topographic data.** Each organization plan shall contain a summary describing the general topographic relief, geology, aquifers, and all known groundwater and surface water connections. The summary should reference available publications and maps where data may be available in greater detail. A map defining appropriate subwatershed units within the organization must be included.

Subp. 4. **Surface water resource data.** Necessary surface water data within the watershed includes:

A. a map of the public waters and public ditch systems established under Minnesota Statutes, chapter 103D or 103E, including the location of existing dams and control structures;

B. a copy of the National Wetlands Inventory Map produced by the United States Fish and Wildlife Service and, if considered useful by the organization, a copy of the Metropolitan Mosquito Control District Mosquito Control Wetland Inventory;

C. either an inventory of the functional values of the wetlands present, a provision for a phased project to create the inventory within a given time frame, or the adoption of a specific process to identify the functional values on a case-by-case basis for the review of individual project

proposals, all of which must be consistent with Minnesota Statutes, section 103B.3355;

D. a table of the major hydrologic characteristics of public waters if provided by the Department of Natural Resources in a format that can be readily incorporated in a plan;

E. maps showing the areas served by each existing stormwater system that identify existing stormwater ponds and the location of all stormwater outfalls;

F. a table summarizing available information on the 100-year flood levels and peak discharges of existing and proposed stormwater ponds and flood profile information that corresponds to the peak discharges of channelized flow passing through the watershed. The plan shall determine the need for additional data and recommend a schedule for the data. A discussion must also be provided relative to the consistency of the flood profile information developed as part of the stormwater management plan to that of any information published in a Federal Emergency Management Agency flood insurance study;

G. a general discussion of, or a map showing areas of, known flooding problems not identified as flood-prone in a published flood insurance study;

H. a listing of the existing flood insurance studies and a location of where they can be viewed;

I. a summary of water quality data and any related information, if available, from the Pollution Control Agency, the Department of Natural Resources, the Department of Transportation, the Department of Health, the Metropolitan Council, the Metropolitan Waste Control Commission, the water management organization, the soil and water conservation district, and the affected counties and cities;

J. a map or list, if available, showing the location of known existing and abandoned surface water quality and quantity monitoring sites;

K. a list of municipalities with approved shoreland ordinances and projected completion dates for those without ordinances; and

L. a table listing the amounts and locations of all surface water appropriations as permitted by the Department of Natural Resources and provided to the organization.

Subp. 5. **Groundwater resource data.** Necessary groundwater data includes any data required to be included in the organization plan by a county groundwater plan. If a county groundwater plan is not anticipated to be completed, the organization plan must include groundwater data as necessary to allow groundwater issues to be addressed.

Subp. 6. **Soil data.** Each organization plan must include a general discussion of the types of soil present, their development limitations, their infiltration characteristics, and their tendency to erode. The discussion must include a list of references where more detailed data are available.

Subp. 7. **Land use and public utility services.** Necessary land use and public utility services information is limited to information that existed at the time the plan or plan amendment was developed, including:

A. a general map of existing land uses;

B. a general map showing anticipated land uses; and

C. reference to the location of the metropolitan urban service area.

Subp. 8. **Water-based recreation areas and land ownership.** Necessary information on water-based recreation areas and land ownership includes a map or a discussion of the location of all existing and proposed local, regional, state, and federal parks, preserves, wildlife areas, recreation areas, canoe routes, and water accesses available for use by the public.

Subp. 9. **Fish and wildlife habitat.** Necessary information on fish and wildlife habitat includes:

A. a list and description of the Department of Natural Resources ecological and management classifications for lakes and streams, where available;

B. a list and description of the conclusions and recommendations of biological surveys or reconnaissance studies, where available; and

C. a description of state management plans for fish and wildlife areas, where available.

Subp. 10. **Unique features and scenic areas.** Necessary unique feature and scenic area information includes a map or a description or listing of unique features and scenic areas with relationships to water including state designated natural and scientific areas; areas containing county, state, and federal rare and endangered species; and other features such as waterfalls, springs, historic mills, and heritage elements identified by the Department of Natural Resources heritage program, to the extent it is available from the department.

Subp. 11. **Pollutant sources.** Necessary information on pollutant sources includes a map or list from appropriate agencies of:

A. known closed and open sanitary landfills, closed and operating open dumps, and hazardous waste sites identified under Minnesota Statutes, chapter 115A or 115B, and a summary of available water quality information relating to these sites; and

B. feedlots, abandoned wells as defined by the Department of Health, registered underground and aboveground storage tank sites, permitted wastewater discharges, and a summary of available water quality information relating to these sites.

If the information in this subpart is included in a county groundwater plan, the information can be excluded from the organization plan if suitable references are provided.

8410.0070 IMPACT ON OTHER UNITS OF GOVERNMENT.

During the development of its plan or plan amendments, each watershed management organization shall request a summary of the relevant water management policies and goals of each local, regional, and state review authority identified in Minnesota Statutes, section 103B.231, subdivisions 7, 8, and 9. The organization shall take into consideration the goals and policies of the review authorities when drafting the organization's goals and policies. The organization's plan

shall clearly outline and justify anticipated inconsistencies between its goals and policies and those of the authorities who responded if the requested information is furnished within 45 days of the organization's request.

8410.0080 ESTABLISHMENT OF GOALS AND POLICIES.

Subpart 1. **Plan contents.** Each plan must contain specific goal statements and corresponding policies relating to the overall purposes specified in Minnesota Statutes, section 103B.201. The goals and policies of the watershed management organization shall attempt to avoid conflict with county, regional, or state goals and policies. The goals must be outlined in sufficient detail to provide direction regarding what the policies should accomplish, provide direction to the organization's board, and allow for the success or failure of the goals and policies to be quantified. The goals and policies should recognize the fundamental relationship between water quality and land use. Development of goals and policies must, at a minimum, address the issues in subparts 2 to 9.

Subp. 2. **Water quantity.** Each plan must outline goals and policies describing how stormwater runoff will be managed. The maximum allowable peak runoff must be established for appropriate subwatersheds to the extent necessary to assure that the goals and policies of the organization will be met and address how runoff from developments creating more than one acre of new impervious surface will be managed with respect to Minnesota Statutes, section 103B.3365. The plan must describe the criteria used for defining "appropriate subwatersheds."

Subp. 3. **Water quality.** Each plan must outline specific water quality goals and policies for natural surface water storage and retention systems within the organization. Goals should be related to parameters or quantities that can be measured. The relationship of land use to water quality should be considered when developing goals and policies. The goals and policies should be developed to strive for compliance with applicable water quality standards and be suitable for the

intended uses of natural surface water storage and retention systems.

Subp. 4. **Recreation and fish and wildlife.** Each plan must outline how water resource based recreational activities and wildlife interests will be protected or improved through the implementation of the plan. In consideration of these issues, the plan must determine whether there is a need to classify or prioritize individual water resources for management purposes.

Subp. 5. **Enhancement of public participation; information and education.** Each plan must outline goals and policies describing who will participate and when public participation will be encouraged. Goals and policies must at least address the creation and purposes of advisory committees and public information programs.

Subp. 6. **Public ditch systems.** If public ditch systems constructed under Minnesota Statutes, chapter 103D or 103E, are within the organization, the plan shall by policy define the organization's relationship to the ditch authority and recommend whether or not there are advantages to managing the ditch systems under the Metropolitan Water Management Act and determine whether ditch maintenance activities have the potential of adversely impacting any goal of the organization.

Subp. 7. **Groundwater.** If a county groundwater plan has not commenced at the time the plan or plan amendment is initiated, the organization shall assess the need and degree of involvement the organization has in groundwater management and establish appropriate goals and policies.

Subp. 8. **Wetlands.** Each plan must outline specific goals and policies regarding the management of wetlands within the organization and identify high priority areas for wetland preservation, restoration, and establishment. Wetland management goals and policies should address utilization, protection and preservation, and the enhancement or restoration of wetlands identified in the organization. Each plan must also evaluate the need to establish a wetland banking system.

Subp. 9. **Erosion.** Each plan must identify specific goals

and policies that will control soil erosion consistent with the goals and policies outlined in this part.

8410.0090 ASSESSMENT OF PROBLEMS.

Each plan must contain an assessment of existing and potential water resource related problems using a combination of analysis of land and water resource data collected under part 8410.0060 and through the identification of existing or potential problems by residents or local, regional, or state agencies. During the development of the assessment, the watershed management organization shall request a brief assessment of existing problems affecting the organization from the plan review authorities, the Department of Transportation, and the Department of Agriculture based on data, plans, and other documentation in their possession. The organization should solicit comments from residents and local officials in the watershed district for information about problems that may be primarily local in nature. The organization's assessment shall include a discussion of the relationship of locally identified problems to problems identified by the plan review authorities, provided the information is received within 45 days of the organization's written request. The assessment of existing and potential problems as determined by the organization must, at a minimum, include the following topic areas:

A. specific lakes and streams with water quality problems;

B. flooding and stormwater rate control issues within and between communities;

C. impacts of water quality and quantity management practices on recreation opportunities;

D. impacts of stormwater discharges on water quality and fish and wildlife resources;

E. impact of soil erosion on water quality and quantity;

F. general impact of land use practices and, in

particular, land development and wetland alteration on water quality and water quantity;

G. the adequacy of existing regulatory controls to manage or mitigate adverse impacts on public waters and wetlands;

H. the adequacy of programs to:

(1) limit soil erosion and water quality degradation;

(2) maintain the tangible and intrinsic values of natural storage and retention systems; and

(3) maintain water level control structures;

I. the adequacy of capital improvement programs to correct problems relating to:

(1) water quality;

(2) water quantity management;

(3) fish and wildlife habitat and public waters and wetland management; and

(4) recreational opportunities; and

J. future potential problems that are anticipated to occur generally within a 20-year period based on growth projections and planned urbanization identified in local and regional comprehensive plans. The assessments must include a discussion of the relationship between locally identified problems and the problems and goals identified in county, regional, state, and federal plans that are brought to the attention of the organization.

8410.0100 IMPLEMENTATION PROGRAM.

Subpart. 1. **Plan contents.** Each plan must describe an implementation program consisting of nonstructural, structural, and programmatic solutions to the problems, issues, and goals identified under parts 8410.0080 and 8410.0090. In developing its implementation program, the requirements in subparts 2 to 7 must be followed. Each plan should clearly define the responsibility of the watershed management organization and the local units of government in carrying out the implementation

program and further define the organization's role when a local unit of government is considering a variance or fails to implement its water resource management responsibilities.

Subp. 2. **Regulatory controls.** In establishing required regulatory controls, items A to E must be considered.

A. Each plan must provide for the regulation of activities in wetlands and specify respective duties of the organization and local units of government. Each plan must describe local controls and procedures regarding carrying out the local government responsibilities under the Wetland Conservation Act of 1991, Laws 1991, chapter 354, and any rules adopted under it. Each plan must also define any other controls the organization has determined to be necessary to achieve its water management goals that may be more restrictive than those required by the Wetland Conservation Act of 1991, Laws 1991, chapter 354. The description must consider, where applicable, the following topics:

(1) the relationship of the organization, state agencies, local soil and water conservation districts, and affected counties, cities, and towns with respect to authority, administration, and coordination;

(2) designated repositories for required maps or inventories of wetlands;

(3) procedures related to enforcement;

(4) a description of local wetland banking programs and their relationship to a corresponding state program; and

(5) the methods and procedures to be used in determining replacement of wetland values in mitigation proposals.

B. The organization shall specify controls or programs to reduce erosion and sedimentation to receiving waters. In rural areas, agricultural crop land erosion may be controlled by implementing zoning ordinances consistent with part 6120.3300, subpart 7, and may include other water resources outside of designated shoreland areas as considered appropriate

by the organization. Organizations affected by specific state laws requiring adoption of uniform countywide erosion and sediment control standards or programs must comply with those laws. Any other organization must either adopt by reference an existing set of erosion and sediment control guidelines or best management practices published by a county, a soil and water conservation district, the board, or the Pollution Control Agency, or establish comparable erosion and sedimentation guidelines of its own for the purpose of administering erosion controls.

C. Each plan must specify controls that require all appropriate building permits, driveway permits, and grading permits to contain enforceable provisions to protect soil from erosion during and after construction, including sites for which approved erosion control plans are in place.

D. Each plan must identify member local units of government that have failed to adopt and administer a Department of Natural Resources approved shoreland and floodplain ordinance where mandated by state law. If the plan notes that flood damage has occurred outside of mapped floodplains or a potential for flooding exists adjacent to stormwater facilities, the plan shall require the local unit of government to determine if additional local controls are necessary to address the situation.

E. If a plan notes the existence of certain land uses that could adversely affect the organization's ability to achieve its water quality goals, and these uses cannot be properly managed or regulated with existing controls, the uses constitute a public nuisance according to Minnesota Statutes, section 609.74. In those cases, the plan must provide for the adoption of local controls to define and abate the nuisances. For the purpose of this chapter, public nuisances may include any action, failure to act, or land use practice that would impair water quality if allowed to continue.

Subp. 3. **Stormwater and drainage design performance standards.** Each plan must contain minimum standards and provide for appropriate controls for the design of new stormwater

conveyance, ponding, and treatment systems consistent with the overall goals of the organization plan and consistent with Minnesota Statutes, section 103B.3365, subdivision 4. Included will be performance standards that provide for:

A. the establishment of target in-lake nutrient concentrations and corresponding pollutant loadings for sediment and nutrients;

B. the establishment of maximum permissible runoff rates for selected design storms based on considerations such as existing and future flood levels and expected increases in runoff volume with respect to impacts on downstream channels and adjacent development;

C. the establishment of standards to reduce the impacts of flooding on natural resources and personal and real property;

D. the establishment of design criteria for stormwater outlet structures to address floatable pollutants and to provide for access for maintenance and repair;

E. pond design methodology for nutrient entrapment consistent with the subwatershed goals; and

F. compliance with pollutant loading for specific subwatersheds consistent with local, regional, and statewide plans in consideration of Pollution Control Agency water quality standards.

Subp. 4. **Information program.** Each plan must provide for the publishing of at least one written communication per year identifying the representatives on the organization's board, current advisory committee members, how to contract the organization, its role in local water management, the goals and policies of the organization, when public meetings are held, how the organization is financed, where the plan can be viewed, and other information relative to the implementation of the plan. The communication may be accomplished through the publication of a newsletter, publication of all or a portion of an annual report, an article or news release submitted to a local newspaper widely distributed in the member communities, an

attachment to a sewer or water bill, or other similar media format that annually reaches the general population.

Subp. 5. **Data collection programs.**

A. Each plan must establish water quality and quantity monitoring programs that are capable of producing accurate data to the extent necessary to determine whether the water quality and quantity goals of the organization are being achieved. The programs shall, at a minimum, include the location of sampling, the frequency of sampling, the proposed parameters to be measured, and the requirement of periodic analysis of the data.

B. Each plan should encourage all units of government collecting water quality and quantity management data to annually submit the data consistent with state compatibility guidelines to the organization and other appropriate state agencies for entry into public access data bases.

Subp. 6. **Management programs.** Each organization plan must assess or require local plans to assess the need for periodic maintenance of public works, facilities, and natural conveyance systems and specify any new programs or revisions to existing programs needed to accomplish its goals and objectives. Each plan must further identify which units of government or private parties are responsible for maintenance. Each plan must, at a minimum, assess or require local plans to assess:

A. the need and frequency for sweeping of public and private streets and parking lots;

B. the need and frequency for inspecting stormwater outfalls, sumps, and ponds;

C. the adequacy of maintenance programs for stormwater facilities and water level control structures owned by both organization members and nonmembers;

D. the condition of public ditches constructed under Minnesota Statutes, chapter 103D or 103E, if the organization has jurisdiction over these systems;

E. the need to establish a water body management classification system to provide for water quality and quantity

management based on a hierarchical basis;

F. the need to establish local spill containment clean-up plans; and

G. the need for other management programs as considered necessary.

All proposed management programs establishing a classification system for the management of water bodies shall be consistent with chapter 7050. If organization classifications are inconsistent, the organization shall petition the Pollution Control Agency to revise the classifications in chapter 7050.

Subp. 7. **Potential structural solutions to problems.**

A. Each plan that documents existing water management problems that cannot be resolved by preventative actions shall investigate the feasibility of implementing structural solutions that would remediate or resolve each problem.

B. For each structural solution proposed, each plan shall provide a cost estimate and a recommendation as to how it should be funded.

C. Each potential structural solution identified under this part shall be assigned priorities. In assigning priorities, consideration shall be given to regional and state plans in conjunction with the organization's goals, policies, and problems identified in parts 8410.0080 and 8410.0090.

8410.0110 IMPACT ON LOCAL GOVERNMENT.

Subpart 1. **Existing local controls.** Each plan shall review the impact of local controls and programs required by the plans according to part 8410.0100. This review shall include concerns expressed by counties, cities, and townships with respect to their administrative and financial capabilities to adopt and enforce the controls and programs in addition to a table that generally describes the status of local controls and programs of affected counties, cities, and townships with respect to that required by the plan.

Subp. 2. **Financial impact on local government.** Each plan

shall contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under part 8410.0100. The analysis shall include, at a minimum, an estimate of the costs associated with the plan's implementation and anticipated sources of revenue.

Subp. 3. **Adoption by reference.** All or part of a watershed management organization plan may be adopted by reference by a local unit of government for all or part of its local plan to the degree specified in the approved organization plan.

8410.0120 IMPLEMENTATION PRIORITIES.

Each plan must prioritize the plan implementation components to make the best use of available local funding; to prevent future water management problems from occurring to the maximum extent practical; and to ensure that regional, county, state, and federal grant funding is targeted properly.

8410.0130 IMPLEMENTATION COMPONENTS.

Subpart 1. **Controls.** Each organization plan must provide for the adoption of necessary regulatory controls, stormwater design standards, education programs, data collection programs, and maintenance programs that the plan identifies under part 8410.0100.

Subp. 2. **Responsibilities.** Each organization plan must clearly distinguish the responsibilities of the watershed management organization versus the responsibilities of affected counties, cities, and townships with respect to each implementation program element established according to part 8410.0100.

Subp. 3. **Schedule.** Each organization plan must include a schedule for implementation by the organization, joint powers agreement members, and affected local units of government. All plan controls and programs to be implemented by the organization must be in effect within one year of plan adoption. All local plan controls and programs must be developed and in effect within two years of adoption of the last organization plan in

the local unit of government.

Subp. 4. **Capital improvement program.** Each organization plan shall include a capital improvement program that identifies specific capital improvements necessary to implement the water resource management goals and policies of the organization.

Subp. 5. **Enforcement.** Each organization plan must identify the procedure to be followed to enforce violations of the controls of the organization as well as those of the local unit of government.

Subp. 6. **Administration process.** Each organization plan must specify the administrative process and timelines for the submittal, review, and approval of local plans and variances by the organization.

8410.0140 PLAN CONTENTS; AMENDMENTS.

Subpart 1. **Amendment section.** Each plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishing the process by which interim amendments may be made and who may initiate the amendments.

Subp. 2. **General amendment procedure.** All amendments to a plan must adhere to the review process provided in Minnesota Statutes, section 103B.231, subdivision 11, except when the proposed amendments constitute minor amendments and:

A. the watershed management organization has held a public meeting to explain the amendments and published a legal notice of the meeting twice, at least seven days and 14 days before the date of the meeting;

B. the organization has sent copies of the amendments to the affected local units of government, the Metropolitan Council, and the state review agencies for review and comment; and

C. the board has either agreed that the amendments are minor or failed to act within 45 days of receipt of the amendments.

Subp. 3. **Minor amendments to capital improvements.** Amendments to an approved plan's capital improvement program may

be considered to be minor plan amendments if the following conditions are met:

A. the original plan set forth the capital improvements but not to the degree needed to meet the definition of "capital improvement program" as provided in Minnesota Statutes, section 103B.205, subdivision 3; and

B. the affected county or counties have approved the capital improvement in its revised, more detailed form.

Subp. 4. **Form of amendments.** Unless the entire document is reprinted, all amendments adopted by the organization must be printed in the form of replacement pages for the plan, each page of which must:

A. on draft amendments being considered, show deleted text as stricken and new text as underlined;

B. be renumbered as appropriate; and

C. include the effective date of the amendment.

Subp. 5. **Distribution of amendments.** Each organization must maintain a distribution list of agencies and individuals who have received a copy of the plan and shall distribute copies of amendments within 30 days of adoption. All organizations should consider sending drafts of proposal amendments to all plan review authorities to seek their comments before establishing a hearing date or commencing the formal review process.

8410.0150 ANNUAL REPORTING REQUIREMENTS.

Subpart 1. **Requirement for annual financial, activity, and audit reports.** Within 120 days of the end of the watershed management organization's fiscal year, each organization shall submit to the board a financial report, an activity report, and an audit report for the preceding fiscal year if it has expended or accrued funds during this time. These reports may be combined into a single document. The audit report for the preceding fiscal year must be prepared by a certified public accountant or the state auditor and forwarded to the state auditor's office within 120 days of the end of the fiscal year.

Subp. 2. **Content of annual financial report.** The annual financial report must include the following information:

A. the approved budget;

B. a reporting of revenues;

C. a reporting of expenditures; and

D. a financial audit report or section that includes a balance sheet, a classification of revenues and expenditures, an analysis of changes in final balances, and any additional statements considered necessary for full financial disclosure.

Subp. 3. **Content of annual activity report.** The annual activity report must include the following information:

A. a list of the organization's board members, advisory committee members, and board member vacancies at the end of the reporting year, including the names of designated officers and members and information on how members can be contacted, and indicating the governmental organization that each board member represents for joint powers organizations and the county that each member is appointed by for watershed districts;

B. a list of organization employees and consultants, including mailing addresses and telephone numbers;

C. an assessment of the previous year's annual work plan that indicates whether the stated goals and objectives were achieved and, if they were not achieved, indicates why they could not be achieved;

D. a projected work plan for the next year indicating the desired goals and objectives;

E. a summary of the permits or variances issued or denied under ordinances or rules required by the organization or local plan and any enforcement actions initiated by either the organization or its local units of government;

F. a summary of water quality monitoring data collected by the organization or its local units of government;

G. an evaluation of the status of local plan adoption and implementation based on a review of the local unit of governments' activities by the organization during the past

year;

H. a copy of the written communication required by part 8410.0100, subpart 3;

I. the organization's activities related to the biennial solicitations for interest proposals for legal, professional, or technical consultant services under Minnesota Statutes, section 103B.227, subdivision 5;

J. an assessment of changes in fund balances, including a description of the costs of each program element with respect to the overall annual budget; and

K. the status of any locally adopted wetland banking program.

Subp. 4. **Procedure for state audit.** The board shall use the procedure described in items A to D to determine whether to order a state financial or performance audit of an organization.

A. Before the board will consider ordering a state audit, a written complain must be filed with the board's executive director requesting the board to order a state audit. The complaint must state as specifically as possible the grounds for requesting a state audit. Valid grounds for requesting a state audit include the mishandling or misuse of public funds or the documented failure to implement an approved plan.

B. The executive director shall determine whether there is a basis for a complaint before reporting the complaint to the board. The executive director shall ensure that the affected organization is notified of the complaint and given an opportunity to respond to the allegations before determining whether there is a basis for the complaint.

C. If the executive director determines there is a basis for the complaint, the complaint shall be reported to the board. The affected organization shall be given an opportunity to appear before the board at the time the complaint is reported to it and respond to the allegations in the complaint. The complainant shall also be given an opportunity to appear.

D. After having the complaint reported to it, and after providing an opportunity for the organization and the

complainant to be heard by it, the board shall decide whether to order a state financial or performance audit of the organization.

CONTENT OF LOCAL PLANS

8410.0160 GENERAL STRUCTURE.

Each local plan must, at a minimum, meet the requirements for local plans in Minnesota Statutes, section 103B.235, except as provided by the watershed management organization plan under part 8410.0110, subpart 3. Each local plan must include sections containing a table of contents; purpose; water resource related agreements; executive summary; land and water resource inventory; establishment of goals and policies; relation of goals and policies to local, regional, state, and federal plans, goals, and programs; assessment of problems; corrective actions; financial considerations; implementation priorities; amendment procedures; implementation program; and an appendix. Each community should consider including its local plan as a chapter of its local comprehensive plan. Each local plan shall be adopted within two years of the board's approval of the last organization plan that affects local units of government.

8410.0170 STRUCTURE.

Subpart 1. **Purpose.** Each local plan must have a section entitled "Purpose" outlining the purposes of the water management programs required by Minnesota Statutes, sections 103B.205 to 103B.255.

Subp. 2. **Water resource management related agreements.** Appropriate water resource management related agreements that have been entered into by the local community must be outlined, including joint powers agreements related to water management that the local community may be party to between itself and watershed management organizations, adjoining communities, or private parties. Available information concerning these agreements in general conformance with the content of joint powers agreements for organizations as outlined in part 8410.0030 must be included.

Subp. 3. **Executive summary.** Each plan shall have a

section entitled "Executive Summary" that generally summarizes the content of the local plan in a manner similar to that required for organization plans under part 8410.0050.

Subp. 4. **Land and water resource inventory.** Each local plan must contain a composite land and water resource inventory containing all relevant data from organization plans affecting it consistent with the data required by part 8410.0060.

Subp. 5. **Establishment of policies and goals.** Each local plan must state specific goals and corresponding policies related to the purpose of these plans, be consistent with the policies and goals of the organization plans within the city or township, and address the relation of the local plan to the regional, state, and federal goals and programs outlined in part 8410.0070.

Subp. 6. **Assessment of problems.** Each plan must contain a summary assessment of existing or potential water resource related problems, including those identified in organization plans that affect the community. The problem assessment must be completed for only those areas within the corporate limits of the community and meet the same content requirements as those outlined for organization plans under part 8410.0080, subparts 1 and 2.

Subp. 7. **Corrective actions.** Each local plan shall describe nonstructural, programmatic, and structural solutions to the problems identified in subpart 6. The mandatory actions for organization plans outlined in part 8410.0100, subparts 1 to 6, shall be considered except that actions must be limited to those that can be implemented at a local level. All corrective actions must be consistent with the organization plans having jurisdiction in the municipality or township.

Subp. 8. **Financial considerations.** Each local plan must contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under subpart 7. The analysis must include, at a minimum, the following items:

A. the estimated cost of adoption and enforcement of

local controls and standards for the local municipality;

B. the estimated annual cost of implementation of other specified programs to each local municipality;

C. a discussion of local ability to fund adoption of and enforcement of local controls and standards, implementation of other specified programs, and capital improvements, including:

(1) levy limit constraints;

(2) effect on other city funding needs;

(3) establishment of watershed management taxing districts;

(4) creation of stormwater utilities; and

(5) monetary impact against homes or farmsteads in affected community;

D. the impact on the local municipality of local implementation of each capital improvement project component if ad valorem financing is used; and

E. a summary of grant funding that would likely be available to fund water management projects and programs.

Subp. 9. **Implementation priorities.** Each local plan must prioritize implementation components to make the best use of available local funding and prevent future water management problems from occurring to the maximum practical extent. Local plans must prioritize organization plan implementation components in line with organization priorities as outlined under part 8410.0120 only for implementation components that must be facilitated by the local municipality or township.

Subp. 10. **Implementation program.** Each local plan must outline required implementation components that apply at a local level. These components shall be consistent with the required plan components outlined for organization plans under part 8410.0130. Official local controls must be enacted within six months of adoption of the local plan.

Subp. 11. **Amendment procedures.** Each local plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishes the process by which amendments may be made. The amendment procedure shall conform

with the plan amendment procedure outlined in the organization plans that affect the community. Local plan amendments must be forwarded to each organization affected by the local plan amendment for review and approval before adoption.

Subp. 12. **Submittal and review.** After consideration and before adoption, the local plan shall be submitted to all affected organizations for review according to Minnesota Statutes, section 103B.235. Each local unit of government must also notify affected organizations within 30 days of adoption and implementation of the plan, including the adoption of necessary official controls.

8410.0180 DETERMINATIONS OF FAILURE TO IMPLEMENT.

Subpart 1. **Applicability.** This part applies when a plan is not being implemented for a watershed either because no watershed management organization exists, because the organization has not adopted an approved plan, or because the approved plan is not being carried out.

Subp. 2. **Establishing cause.** Before the board's involvement in determinations of whether a plan is being properly implemented, the board shall first establish just cause for the determination by review of a written complaint from an aggrieved party or through conclusions arrived at by board staff under the review of an organization's annual report. A complaint or appeal made by an aggrieved party under Minnesota Statutes, section 103B.231, subdivision 13, must be made in writing to the executive director of the board and must summarize the issues at dispute and the efforts the party made to resolve the problem.

Subp. 3. **Board staff responsibilities.**

A. Board staff may investigate issues relating to alleged failure to implement plans primarily by response from written complaint from an aggrieved party or by review of the organization's annual report. Within 30 days of receiving a written complaint, board staff are required to initiate a preliminary investigation of the facts as they appear based on

personal observation, review of all relevant documents, and discussions with involved parties. The results of this preliminary investigation shall be reviewed with the executive director, and the board's legal counsel if appropriate, before preparation of a report. The report shall ascertain whether a failure to implement exists, define the exact nature of the failure to implement, and recommend a course of action.

B. On completion of a report regarding a complaint or review of an annual report, the staff shall send a copy of its report by certified mail to the organization members of record to set a time and place for a meeting agreeable to all parties to informally discuss the contents of the report if a conflict exists. The complainant and any other aggrieved or affected party shall also be sent a copy of the report by certified mail and shall be invited to attend any meeting held to discuss the report.

C. The affected organization shall be allowed 30 days to hold a public meeting to develop a formal course of action if the joint powers agreement requires that process. Any formal response shall be sent by certified mail to the board and any aggrieved or affected party within 15 days of the meeting.

D. The affected organization and any aggrieved or affected party may not appeal to the board's dispute resolution committee established under Minnesota Statutes, section 103B.101, subdivision 10, to hear and resolve disputes over plan implementation until after the meeting has been held according to item B.

E. Based on information discovered at the meeting held according to item B, or receipt of the formal response received from the organization according to item C, board staff shall report to the board at a regular meeting as to the status of the dispute. If the board needs to take further action to resolve the dispute, board staff shall recommend the appropriate course of action, consulting with the board's legal counsel as appropriate.

Subp. 4. **Board responsibilities.**

A. On receipt of the board staff's report and recommendations, the board is required to do any or all of the following:

(1) nothing further if the staff's investigation finds that the subject plan is being properly implemented, provided the board concurs;

(2) advise board staff to conduct additional fact finding it considers necessary and report back to the board accordingly;

(3) order the dispute resolution committee to convene to attempt to negotiate the matter and to advise the board further; or

(4) issue findings of fact and conclusions of its investigation advising the affected organizations, county, or counties of the documented failure to implement the subject plan and advise the appropriate unit of government of its responsibility to implement the plan under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (b), within a prescribed period of time.

B. On issuance of its findings under subpart 3, item A, the board shall notify the appropriate counties to proceed as required by Minnesota Statutes, section 103B.231, subdivision 3, paragraph (b) or (c), as applicable. If a county fails to act after it is notified, the board shall notify state agencies that they may initiate their prerogatives under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (g).

C. The board's dispute resolution committee has the following duties and responsibilities with respect to disputes relating to failure to implement a plan:

(1) convene and hear appeals from both aggrieved parties and organizations not satisfied with the findings and recommendations of the board's staff report presented at the meeting required by subpart 2; and

(2) convene at the pleasure of the board as prescribed by item A to attempt to negotiate and settle disputes over determinations relating to implementation of plans and to

further advise the board.

APPROVED AS TO FORM AND LEGALITY

July 1 19 92

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUL 01 1992

Joan Anderson Growe
Secretary of State

10:36a

Stat Authority 103B.101 subd 7.
The board may hold public hearings and adopt rules necessary to execute its duties.

103B.211 subd 1
A watershed district wholly within the metropolitan area may be terminated pursuant to this section or chapter 103D

103B subd 6
Contents the plan shall . . .
etc

103B subd 10
adoption and implementation

103B subd 14
Annual report

103B.227 subd 3
Removal

end of comment period, May 6, 1992

Rules 8410.0020 subd 10
Do they have the authority to do this?
8410.0030 N.O. why are those reasonable - why 90 days why 3 representatives?

SONAR Rules 8410.0060 subd 6, 7, 9, 10, 11,
why - it seems like somebody got
tired and didn't want to address
these

8410.0080
what subd 8 9

8410.0100 what about subd 7

6-18-92 called D

MINNESOTA BOARD
OF WATER AND SOIL
RESOURCES
Suite 104
155 South Wabasha
St. Paul, MN 55107

FAX NO. (612) 297-5615

Date Sent
6/22/92
Number of Pages
(Including This One)
2

FACSIMILE TRANSMITTAL COVERSHEET

TO: (Name of Person, Discipline, etc.)

Patty Nolte
Atty. General's Office

FROM: (Name of Person, Discipline, Telephone Number, etc.)

Bruce Sandgstrom
BWSR

REMARKS/COMMENTS:

Please call me to confirm that this is the correct document you are seeking.

297-4958

CERTIFICATE OF THE BOARD OF WATER AND SOIL RESOURCES AUTHORIZING RESOLUTION

I, D. James Nielsen, do hereby certify that I am the Chair of the Minnesota Board of Water and Soil Resources (Board), a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 18th day of December 1991, that a quorum was present, and that a majority of those present voted for the below resolution which has not been rescinded or modified.

> "BE IT RESOLVED, that with respect to the promulgation of rules governing the management of water in the Seven County Metropolitan Area, Ronald D. Harnack, the executive Director of the Minnesota Water and Soil Resources Board, is hereby granted the authority and directed to sign and to give Notice of the Board's Intent to Adopt a Rule Without a Public Hearing and to simultaneously give Notice to Adopt Rules With a Public Hearing upon receiving 25 or more requests for hearing and cancel said hearing if fewer than 25 persons request a hearing; to publish said Notices in the State Register; and to perform any and all acts incidental thereto. "

IN WITNESS THEREOF, I have hereunto subscribed my name this 18th day of December 1991.

D. James Nielsen, Chair
MN Board of Water and Soil Resources

Attested By:

Board Member

a:resoluti.on

METROPOLITAN LOCAL WATER MANAGEMENT RULES

STATEMENT OF NEED AND REASONABLENESS
FOR
MINNESOTA RULES - PARTS 8410.0010 TO 8410.0180

MINNESOTA BOARD OF WATER
AND SOIL RESOURCES

March 17, 1992

METROPOLITAN LOCAL WATER MANAGEMENT RULES
MINNESOTA RULES - PARTS 8410.0010 TO 8410.0180

STATEMENT OF NEED AND REASONABLENESS

SECTION I - INTRODUCTION

These rules were prepared pursuant to legislative mandate provided by Chapter 601 of the Laws of 1990. The rules affect how watershed management is conducted in the seven county metropolitan area, including Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties. Chapter 601 directed the Minnesota Board of Water and Soil Resources (BWSR) to adopt rules governing five major areas relating to watershed planning and implementation, namely:

1. the content of joint powers agreements (M.S. 103B.211, Subd. 1,(b);
2. standards and procedures for removal of members of watershed management organization boards (MS 103B.227, Subd.3);
3. standards and requirements for amendments to watershed plans (MS 103B.231, Subd. 6, (b);
4. standards and criteria for making determinations of whether watershed management plans are being implemented (MS 103B.231, Subd. 10, (b); and
5. requirements and standards for annual financial reports, financial audits and activity reports (MS 103B.231, Subd. 14).

In addition to this authority and mandate, the BWSR has general rule making authority for implementing all its programs pursuant to MS 103B.101, Subd. 7.

A. **History of Local Water Planning in the Metropolitan Area** - The Metropolitan Surface Water Management Act (Act) was passed into law in 1982. The current law is contained in Minnesota Statutes Section 103B.201 to 103B.255. The Act was passed into law as Chapter 509 of the Laws of 1982. The Act is the basis for local watershed planning and management in the seven county metropolitan area. Watershed management plans prepared pursuant to the Act are commonly referred to as "509" plans in reference to the original act.

The Act mandated that comprehensive surface water management plans be developed on a watershed basis throughout the metro area. A primary purpose of the Act was to provide for better coordinated management of surface water among local government units. Where no watershed district was in existence at the time the Act was passed, local government was given the option to form a Watershed Management Organization (WMO) using joint powers agreements to accomplish the necessary planning. There were 10 watershed districts in existence at the time the Act was passed into law. Subsequently, 36 WMOs were formed by joint powers agreements thus creating a total of 46 separate watershed planning entities. Most WMOs have since adopted a plan and are in some phase of implementing it. Upon adoption, each affected city and town must prepare and implement its own local watershed management plan in compliance with all WMO plans affecting it.

The Act was amended in 1987 to allow counties to develop groundwater management plans on a voluntary basis. The amended law is now simply referred as the Metropolitan Water Management Act (Act).

B. **Recommendations of the Metropolitan Local Water Management Task Force -** During 1989, a task force established by the legislature studied the status and effectiveness of the local water management planning activities brought about as a result of the Act. The task force concluded that there were both successes and failures. The failures were related somewhat to lack of state oversight and guidance of the plan development and implementation process. The task force recommended that the legislature revise the Act in order to implement its recommendations. The recommendations were contained in a report entitled "Report of the Metropolitan Local Water Management Task Force to the Governor and Legislature of the State of Minnesota", dated December 15, 1989. The work of the Task Force resulted in the enactment of Chapter 601 as referenced in the introduction above.

C. **The Rule Making Process** - The BWSR developed the proposed rules with the assistance of a 44-member advisory committee. (Two of the original members resigned from the committee during the course of the committee process.) The advisory committee was comprised of interested representatives of nine watershed management organizations (WMOs) and or cities, four watershed districts, four counties, seven soil and water conservation districts, eight state or regional agencies and nine associations or interest groups. Specifically, the membership included representatives from:

Local Government: Anoka County, Anoka Soils and Water Conservation District (SWCD). Black Dog Watershed Management Organization (WMO), Bassett Creek Watershed Management Commission, Carver SWCD, Coon Creek Watershed District (WD), Dakota County, Dakota SWCD, Hennepin Conservation District, Lower Run River WMO, Nine Mile Creek WD, Ramsey County, Ramsey SWCD, Ramsey-Washington Metro WD, Richfield-Bloomington WMO, Riley-Purgatory-Bluff Creek WD, Sand Creek WMO, Scott SWCD, Shingle Creek WMO, Six Cities WMO, Washington County, and Washington SWCD.

Associations: Association of Metro Municipalities, Citizens League, Consulting Engineers Council of Minnesota, League of Women Voters, Minnesota Association of Soil and Water Conservation Districts, Association of Metro Soil and Water Conservation Districts and Wetlands Forum.

State and Regional Agencies: Department of Agriculture, Department of Health, Department of Natural Resources, Metropolitan Council, Metropolitan Waste Control Commission, Pollution Control Agency, State Planning Agency and University of Minnesota.

The full advisory committee met a total of seven times on the following dates: November 1, 1990; December 13, 1990; February 7, 1991; March 21, 1991; June 6, 1991; July 18, 1991; and October 31, 1991. Except for the November 1, 1990 meeting, a draft of the rule was reviewed at each meeting. The rule presented represents the consensus building efforts of the committee. The committee reviewed and commented on seven separate drafts of the rules. The rule as represented by this SONAR is the eight draft of the rule and includes the committee recommended revisions to the seventh draft. At the October 15, 1991 meeting, of the members present, the advisory committee voted unanimously to recommend that the BWSR proceed to formally adopt the eighth draft of the rule.

During the review of the first two drafts of the rule, the committee members were required to state in writing what concerns they had about each section of the rule and to suggest alternative language the BWSR should consider. BWSR staff in turn would respond to each comment in writing in the

minutes of the meeting, either agreeing to the revision or stating why the suggestion was not used. The entire process resulted in over 625 pages of written comments and over 200 pages of meeting minutes. This phase of the process helped to quickly focus on the major issues and build a framework for the rule. In the later drafts of the rule, free discussion of the various issues was allowed, once the framework was established.

For a number of major issue areas subcommittees were established and met to discuss topic areas in greater detail. Subcommittees met seven times and discussed in detail the following issues: wetland protection, water quality monitoring, storm water design standards and plan implementation.

The sixth draft of the rule was presented at six public informational meetings held at three locations to solicit additional comments. Turn out was light at these meetings and no new significant issues were brought forth which the advisory committee had not brought up and discussed. About 450 copies of the sixth draft were mailed to local governmental units and other interested parties prior to the commencement of the public meetings. The public meetings were held at the following times and places:

September 3, 1991 - 7:00 p.m. - White Bear Lake City Hall
September 4, 1991 - 7:00 p.m. - Minnetonka Community Center
September 5, 1991 - 2:00 p.m. - Burnsville City Hall
September 10, 1991 - 9:00 a.m. - White Bear Lake City Hall
September 11, 1991 - 9:00 a.m. - Minnetonka Community Center
September 12, 1991 - 7:00 p.m. - Burnsville City Hall

D. **Concept of the Rules** - About one half of the rules deal with the content of second generation watershed management plans of both watershed management organizations and of metropolitan cities and towns. The other half of the rules define the required content of joint powers agreements, annual reporting requirements of watershed management organizations and procedures for dealing with situations where plans are not being properly implemented.

The rules will have an impact on all WMOs. Generally, the rules will have the most limited effect on those WMOs that have established successful watershed management programs. The sections of the rules dealing with plan content are structured to "guide" the planning process instead of trying to prescribe the same solutions for every watershed.

Section II of this SONAR is an itemized account of each subpart of the rule wherein the rule subpart is briefly summarized, a reason for inclusion is given and a statement of justification is presented. Section III explains the potential impact or lack thereof the rule has on agriculture and small businesses. Section IV explains the potential fiscal impact the rules may have on local governments.

SECTION II - JUSTIFICATION OF EACH PART OF THE PROPOSED RULES

Section 8410.0010 - Scope

Summary of Content - This section of the rule outlines that the rules apply to the general administration of watershed management activities and to amendments to existing plans made after January 1, 1995. Plan amendment schedules and/or amendment procedures are also outlined along with BWSR's responsibilities and authorities to affect implementation in cases where a plan is not being properly implemented.

Reason for Inclusion - To provide the reader with clear direction regarding what metropolitan watershed activities are covered by these rules and when various aspects of the rule are effective.

Justification for Section 8410.0010

Subpart 1: The proposed time lines associated with the amendment schedule and/or amendment procedures were reviewed at length with the advisory committee. Concerns related to the time line being too long were discussed along with opposing points of view that the WMO should have the ability to use the plan for a reasonable period of time prior to being required to amend the plan to conform to these new rules. In establishing the effective date of the rule with respect to plan content, the BWSR Advisory Committee considered the amendment schedules that were included in previously approved first generation plans, the length of time that has passed since the first plans were approved, and general feedback from the advisory committee. Subsequently, the committee settled on the requirement that a WMO must amend its plan consistent with the amendment schedule and procedures outlined in the plan, but not later than 10 years from the date of initial plan approval.

Subpart 2: The general feeling of the advisory committee and the BWSR was that the BWSR should have the power to order plan implementation, but only under selected circumstances. The committee and the BWSR felt it was inappropriate to provide the BWSR with the authority to require the WMO to modify a previously approved plan. The BWSR's authority should be limited to only taking action if an approved plan was not being properly implemented.

Section 8410.0020 - Definitions

Summary of Content - Definitions for 23 key words, phrases, or abbreviations are provided as they specifically apply to Parts 8410.0010 through 8410.0180 of these rules. This document will only attempt to explain the definition of terms thought to important to the proper interpretation of the subject rules since many are self explanatory.

Reason for Inclusion - To provide a clear definition of commonly used terms within this rule.

Justification for Key Terms Contained in Section 8410.0020

Subpart 3: Minnesota Statutes, section 103B.231, subd. 6 requires that each WMO plan contain a capital improvement program but does not define what constitutes a capital improvement. The advisory committee disclosed that there was considerable variance in what local government defined as a capital improvement. Consequently, it was agreed that maintenance of existing improvements should explicitly not be construed to be a capital improvement since only a minority of local governments include maintenance in their local definition.

Subpart 10: Many amendments to WMO plans are minor in nature in that they are aimed at providing administrative efficiency or clarification of policies presented in the plan. The advisory committee and BWSR staff agreed that such amendments should not have to be subjected to the rather lengthy, detailed review process prescribed in Minnesota Statutes section 103B.231, Subd. 8 and 9 if ample public disclosure was made and the amendment did not

abrogate the plan's implementation program.

Subpart 13: The purpose of the Act contained in Minnesota Statutes section 103B.201 makes reference to natural surface water storage and retention systems but doesn't provide any guidance to what waters the Act expects WMOs to address in their plans. The definition clearly defines those waters of the state that should be the focus of WMO planning efforts.

Subpart 19: BWSR staff urged that planning goals be established on a finite basis so that measures of success could be achieved. The advisory committee recommended that WMOs be given the latitude to define what is the appropriate level of planning due to the unique characteristics of each watershed. Thus the definition of "subwatershed" is purposely vague in order to meet the objectives of each parties' perspective. The term is used in section 8410.0080, Subp. 2 and 8410.0100, Subp. 3.

Subpart 23: The issue of what is a wetland and what is not is of particular concern with respect to watershed management. In order lessen confusion on a sometimes very technical issue, the advisory group agreed that reference to the appropriate state statute defining "wetland" will provide the needed uniformity in application of the rule and consistency with the Wetland Conservation Act of 1991. Section 8410.0100, Subp. 1, A. sets forth specific directive as to how wetlands are to be regulated.

Subpart 24: The concept of mitigating the negative impacts of development on wetlands is becoming an important issue in watershed management. Many local governments are proposing to establish "wetland banking systems" in order to allow flexibility in achieving their watershed management goals. The phrase is loosely defined since application of the concept is in its infancy while there is a need to condone the practice as a valid watershed management tool.

Section 8410.0030 - Content of Joint Powers Agreements

Summary of Content - This section of the rule outlines the minimum information that must be included in a WMO joint powers agreement. Specific information that must be provided or addressed includes, but is not limited to; 1) legal description of the WMO's boundaries, 2) budget and work plan, 3) terms of compensation, 4) powers and duties of the WMO and its officers and members, 5) the duration of the joint powers agreement, and 6) the process that must be followed if the agreement is to be dissolved. The schedule for updating joint powers agreements in conformance with these rules is also outlined.

Reason for Inclusion - Minnesota Statutes Section 103B.211, Subd. 1(b) mandated that BWSR adopt rules prescribing minimum requirements for the content of watershed management organization joint powers agreements. M.S. Section 103B.211, Subd. 1(c) also mandates the specific voting requirements for decisions of WMOs and, therefore, it is appropriate for the rule to cross-reference said requirements.

Justification for Section 8410.0030

General: The minimum content requirements for joint powers agreements contained in the rule attempts to provide direction to WMOs concerning issues that typically need to be clarified between members of the WMO. The general concern of the BWSR and the advisory committee was that the minimum content requirements for the joint powers agreement should remain very limited to prevent the unproductive effort of addressing issues that are

not factors within a given WMO. It is the BWSR's position that the proposed rule language is consistent with these considerations. The language associated with this content of joint powers agreement section has been written to provide each WMO with latitude concerning many issues that should be addressed in the joint powers agreement. Rather than being overly prescriptive, it was the intention of the BWSR to allow the WMOs to address these issues utilizing a procedure or process they feel would be most appropriate.

Subpart 1.G. The need for establishment of citizen and technical advisory committees received considerable deliberation. Some individuals felt it appropriate to require that such committees be established, others felt that they were not necessary. The language, as drafted, provides the WMO with latitude concerning the need for these committees and specifically requires the WMO to develop procedures that would provide for the establishment of these committees should their formation be desired.

Subpart 1.J. Considerable discussion and deliberation went into the extent to which specific requirements for notification on the location and time of meetings should be spelled out. The language requiring that a process be developed and inserted into the joint powers agreement allowing the WMOs to specifically define the process was deemed most appropriate as most WMOs have specific ways of notifying appropriate individuals of the location and time of meetings.

Subpart 1.L. Considerable deliberation was undertaken regarding the need for a minimum number of WMO meetings. Many members felt that a minimum requirement to have meetings scheduled at least annually was too lax, and WMOs should be required to meet more frequently. It was the BWSR's perspective to require at least an annual meeting, but rely on the "good faith" actions of the WMOs to meet as frequently as necessary to properly manage water resources.

Subpart 2: The BWSR carefully considered various alternatives concerning the time table for updating joint powers agreements. Some members of the advisory committee wanted the time period shortened and others wanted it lengthened to accommodate various considerations. After discussion, it was the general consensus of the advisory committee that updating the joint powers agreements no later than January 1, 1993 or one year after adoption of these rules was a reasonable time for this task.

Subpart 3 To address situations of non-performance particularly in the more rural areas, the draft rule language provides that counties may be members of joint powers agreement WMOs when the non-performance conditions described in the Minnesota Statutes Section 103B.211 Subdivision 3 are present.

Section 8410.0040 - Removal of Organization Representatives

Summary of Content - This section of the rule outlines the terms and conditions under which a WMO representative could be removed. An appeal process is also outlined with the BWSR acting as an appeal authority in such matters.

Reason for Inclusion - Minnesota Statutes Section 103B.227, Subd. 3 requires the BWSR to adopt rules prescribing standards and procedures for removing members of WMOs.

Justification for Section 8410.0040 - The intention of the proposed language is to provide a mechanism through which an individual member may be removed from the position by the appointing authority. Considerations regarding the removal respond to performance related issues as well as for the removal of an individual for virtually no reason provided they were appointed to the WMO board at the will of the appointing authority. If the appointing authority appoints an individual at will, they may also remove the individual at will. It is the intention of the BWSR to also provide an appeal procedure through which any decision of the appointing authority may be directed to the BWSR for resolution.

Concerns relating to the ability of appointing authorities to remove previously appointed managers at will, were typically based on political realities, changes in job title and/or classification, firing or layoffs, etc. Views were expressed that dictated there should be a removal mechanism for individuals serving an indefinite term at the pleasure of the appointing authority even if the member's performance was satisfactory. The classic situation of concern to many members of the advisory committee was when a city appointed it's city engineer or director of public works to the WMO board, and then due to internal personnel actions of the city, the appointed individual was no longer in a position to represent or respond to the local community's wishes in the fashion so desired.

CONTENT OF WATERSHED MANAGEMENT ORGANIZATION PLANS

Section 8410.0050 - Executive Summary

Summary of Content - This section of the rule requires that each plan contain an executive summary briefly describing the general content of the plan.

Reason for Inclusion - This section is included to provide a consistent format typically found in planning documents and reports. The requirement for an executive summary is intended to give the uninformed reader a quick overview of the WMO's problems, policies and goals.

Justification for 8410.0050 - It was the intention of this section to be non-prescriptive and allow for WMOs to have significant amount of latitude concerning the content of this section of the plan. The advisory committee also expressed concerns regarding the need for this section to be non-prescriptive. Overly prescriptive language in this section was deemed to be mettlesome and inappropriate.

It was the BWSR and advisory committee's feeling that an executive summary was an important part of the document if the WMOs perspectives concerning water resource management are to be disseminated to appropriate individuals within the jurisdiction of the WMO.

Section 8410.0060 - Land and Water Resource Inventory

Summary of Content - This section of the rule indicates that each plan must contain an inventory of water resource and physical factors affecting the water resource based upon existing records and publications. The rules provide that existing data publications and maps may be included by reference if the plan summarizes the content and specifies where the publication can be obtained at a convenient location. Required land and water resource data includes information on precipitation, general geology and topographic data, water based recreation and land ownership, fish and wildlife habitat, unique features and scenic areas, and information on pollutant sources.

Reason for Inclusion - M.S. 103B.231, Subd. 6 (a) (1) requires that plans describe the existing physical environment, land use and development in conjunction with proposed development proposed in comprehensive plans. M.S. 103B.231, Subd. 6 (a) (2) further requires plans to present information on the hydrologic system, including existing public drainage systems and problems related thereto.

Concerns and Justification for Section 8410.0060

General: The overriding concern expressed by the BWSR, the advisory committee and others providing comments on the plan was that the information required as part of this inventory should be limited to the greatest practical extent. These comments were based on the concern that the expenditure of resources needed to develop an exhaustive inventory could be a non-productive water resource management expense.

Other concerns were expressed indicating that without adequate land and water resource inventory information, proper surface water management cannot be completed. Furthermore, the development of a plan to address water resource management concerns is not possible without this inventory information.

The BWSR attempted to limit the land and water resources information requirements to only those which were deemed absolutely necessary, and attempted to reduce the effort involved by allowing the adoption by reference of data, publications and maps if available locally. It was the intention of the BWSR, however, to require that each WMO have easy access to the required information so that it can be available to assist the WMO in the proper management of water resources in areas over which it has jurisdiction.

There was considerable discussion on how the surface water resource data required as part of this section of the rule would be obtained if the state agencies having this information were not cooperating with the WMO in a timely manner or providing the information in a readily useable format. It was the BWSR's perspective that if such information was not provided in a reasonable manner, this would be taken into consideration at the time the WMO plan was brought to the BWSR for approval.

Subp. 2 Precipitation data was deemed an important piece of water resource management information. The BWSR intends to develop a standard set of precipitation information that can be made available to WMOs as they prepare their plan so this task will not need to be repeated by each WMO as their plan is updated.

Subp. 3 Information on the general geology and topography within the WMO was deemed necessary if surface water resources are to be properly managed. Groundwater, surface water connections and information on aquifers and the geology of the region was also deemed necessary in order for the WMO to adequately address surface water issues that may have an impact on groundwater management.

Subp. 4 The surface water resource data required as part of this plan was acknowledged by the BWSR to be somewhat extensive, however, most of the information required has been previously developed and is available by simply requesting it from various state agencies or local units of government.

Issues regarding the required inventory of functional values of the wetlands present or provisions

for a phased inventory, or the adoption of a process to identify function of values on a case by case basis were carefully considered. These inventory requirements were in deference to the new wetland management act outlined in Minnesota Statute Section 103B.3355. Future development of wetland rules associated with this statute were intended to be taken into consideration when the functional values of the wetland are addressed in the WMO plan.

Subp. 5 It was the expressed intention of the BWSR to not require extensive groundwater information in surface water management plans. However, plans must acknowledge the inter-relationship between surface and groundwater resources and provide information concerning these resources to the extent that surface water may be managed with a concern toward proper management of groundwater resources.

Supb. 8 Concerns regarding this section included suggestions to eliminate non-water resource related inventory information such as information on hiking trails and unique features in scenic areas. The language was adjusted based on these comments to require inclusion of such information only if it has a direct relationship to the management to surface water resources.

Section 8410.0070 - Impact on Other Units of Government

Summary of Content - This section of the rule discusses how WMOs must address the impact that the WMO plan will have on other affected units of government.

Reason for Inclusion - M.S. 103B.201 defines one of the purposes of the Act to establish uniform polices and goals. Further M.S. 103B.231, Subd. 4 requires that WMOs identify inconsistencies with other plans and to coordinate their planning activities with other units of government.

Concerns and Justification for Section 8410.0070 - The BWSR feels strongly that there is a need for the WMO to have a clear perspective on the water resource management goals and policies of other agencies having jurisdiction over the water resources within the WMO. This knowledge would allow the WMO to develop a plan that is intended to be as consistent as possible with the other agencies goals and polices. It was also the intention of the BWSR to require that WMOs clearly outline and justify any anticipated inconsistency between the goals and policies it drafts in its WMO plan and the goals and policies of the other local, regional and state review authorities. The BWSR also felt it important that this information be provided prior to the establishment of the WMO goals and policies and also prior to the final draft plan being submitted to these agencies for their review. In the interest of expediency, these rules do allow the WMO to proceed with the plan development if the goals and policies of these agencies is not furnished within 45 days of the date the WMO request such information.

Section 8410.0080 - Establishment of Goals and Policies

Summary of Content - This portion of the rule directs WMOs to establish specific goals and policies concerning, at a minimum, the following water resource based issues: water quantity, water quality, recreation, fish and wildlife, enhancement of public participation, information and education, public ditch systems, groundwater, wetlands, and erosion.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires that plans set forth in the objectives, policies and conditions that will be sought for a variety of topics including water quality, natural resource protection and water quantity.

Justification for Section 8410.0080

General: It is the intention of the BWSR that WMO plans establish goals and policies that are in some way measurable and can be quantified. Vague or non-measurable goals would typically not be in conformance with the intent of these rules. The test for goals and policies would generally relate to the ability of the WMO or review agency to determine if the water resource management goals have been met within a specified time period.

Advisory committee members expressed concern that the measurements concerned with determining if the goals and policies were met could be cost prohibitive and would take away resources that otherwise would be available to promote or implement proper surface water management practices. The BWSR attempted to reach some middle ground concerning these issues and developed corresponding rules that were non-prescriptive to allow the WMO's flexibility in establishing goals and policies and identifying the way the success or failures of these goals will be quantified.

Subp. 2 The rules provide for adherence to Minnesota Statute 103B.3365 which requires that runoff from development creating more than one acre of new impervious surface to be properly managed. If a comprehensive plan for a city is available and has been approved, on-site management practices for such parcels can be eliminated.

This section also requires the maximum allowable peak runoff rate be established for "appropriate subwatersheds". Considerable discussion and consideration ensued regarding what is the definition of an appropriate subwatershed. Generally speaking, the BWSR felt that WMOs should be given the flexibility to decide what is an appropriate subwatershed based on the policies and goals unique to the WMO. Subwatersheds could be based on jurisdictional or hydrologic boundaries. Furthermore, particularly in undeveloped watersheds, it was the BWSR's perspective that the establishment of peak allowable runoff rates from these areas could be facilitated through the development of appropriate controls when the watershed is developed.

Subp. 3 The water quality section states the relationship of land use to water quality should be considered when developing goals and policies. The direction provided here is that WMOs should recognize that if specific water quality goals are to be met, the land use within the watershed should be managed to limit non-point source pollution from the runoff generated within it. The use of buffer strips and open space around the perimeter of water bodies for which high quality water is planned, is an example of managing land use to protect water quality.

The water quality section of this part of the rule also states that goals and policies should be developed to strive for compliance with applicable water quality standards and be suitable for the intended uses of natural surface water storage and retention systems. This infers that a water body classification may likely be necessary in order to develop goals and policies. It is the BWSR's position that as part of the development of the WMO plan, the classification of water bodies within the WMO is an integral part in developing appropriate goals and policies within given areas of the watershed. The classification system for these water bodies has been left intentionally vague to allow the WMOs flexibility in this anticipated classification process.

Subp. 5 Concerns were expressed regarding requiring enhancement of public participation, public information or public education programs. Comments were received from opposite perspectives indicating either advisory committees and public information programs should be absolutely required, or that advisory committees and public information programs were a non-productive expenditure of resources. Non-prescriptive language was adopted which allows the WMO to address the issue as they see fit.

Subp. 6 The WMO's involvement in managing officially established county and judicial ditches within the WMO must be defined as part of this planning activity. In the past, watershed districts have typically assumed authority over county and judicial ditches at the time the watershed districts were formed. Joint powers WMOs typically have not managed public ditch systems. However, since ditch management can significantly affect water resources, it is appropriate that WMOs decide what their role is. The process and implementation of ditch management activities must be defined in the plan so that the plan's goals and policies are not inadvertently subverted.

Subp. 7 This section of the rule provides that the WMO assess the need and degree of involvement that the WMO shall have in groundwater management if a county groundwater plan has not been commenced at the time the WMO plan is being developed. It is the intention of the BWSR to not require the development of a specific groundwater plan as part of this surface water management plan unless the WMO feels it is absolutely necessary to do so. In the seven-county metro area, Anoka County was identified as the single county which has not developed or is in the process of developing a county groundwater plan. Again, the language in this section of the rule is non-prescriptive, and allows the WMO the flexibility to assess the need and degree of involvement that it shall have in groundwater management. It was also the BWSR's intention to require that if a county groundwater plan has been developed, that the WMO plan be consistent with the goals and policies of the county groundwater plan as provided for in M.S. 103B.255 and M.S. 103B.231, Subd. 4.

Section 8410.0090 - Assessment of Problems

Summary of Content - This section of the rule describes the procedures and methods that must be followed to preform a comprehensive assessment of existing and potential water resource related problems. The assessment of existing and potential problems must, at a minimum, identify and address issues regarding lake and stream water quality problems, flooding and stormwater rate control problems, and problems related to soil erosion and/or current or projected land use practices. The assessment must also review the adequacy of various regulatory or maintenance programs to provide assurances that water resources are properly managed and protected with the WMO.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires that plans contain an assessment of existing and potential problems.

Justification for Section 8410.0090 - It is the BWSR's perspective that the assessment of problem section is one of the most important planning activities that will take place as part of this plan development. The rules require that each plan contain an assessment of existing and potential water resource related problems using whatever means are available to perform this assessment. If the problem assessment is executed properly, existing water resource related problems will be clearly identified and potential water resource related problems can be avoided. It was the BWSR's position that a fairly comprehensive listing of the topic areas to be covered by specifically listed in this rule to ensure that this important planning activity

is thoroughly completed. It was also the BWSR's perspective that if this assessment is carefully completed, the intention of the law to limit future capital expenditures will be realized.

Section 8410.0100 - Implementation Program

Summary of Content - This portion of the rule requires each plan describe an implementation program consisting of non-structural, structural, or programmatic solutions to the problems, issues and goals identified in previous sections. The implementation program must provide a comprehensive description of the regulatory controls, stormwater and drainage design performance standards, information programs, data collection programs, management programs, and structural solutions that will be followed to address the water resource management problems, issues and goals of the WMO.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires that plans set forth a management plan as well as an implementation program consistent with the management plan. This section further requires the BWSR to adopt rules to establish standards and requirements of watershed plans, including the nature of required controls and uniform erosion control, stormwater retention and wetland protection ordinances.

Justification for Section 8410.0100

General: The implementation program section of this rule is deemed to be the heart of the WMO planning activity. The over-riding concern in the drafting of this implementation program is to assure that the plans provide and identify specific and clearly define non-structural, structural, and/or programmatic solutions to the problems issues and goals identified in the plan. Furthermore, the BWSR interprets the work of the 1989 Legislative Task Force and the intent of the Act to clearly define the specific party responsible for carrying out various aspects of the implementation program so that accountability is defined and achieved.

Subpart 2.A. In regard to wetland protection, plans must anticipate future rules to be developed pursuant to the Wetland Conservation Act of 1991, and Chapter 354 of the laws of 1991. Clearly, the original Act intended that wetland protection and management be a major focus of watershed plans. Because the wetland conservation act post-dates the Act, it is imperative that the plans thoroughly consider and describe how wetlands will be regulated and managed.

Subpart 2.B. It was the BWSR's intention to allow for the adoption by reference of erosion and sediment control guidelines or best management practices that are previously published. If a WMO utilizes this approach, the responsibilities for erosion control plan review permitting and enforcement need only be defined.

Subpart 2.D. It is the intention of the BWSR to encourage local municipalities to adopt and administer the MDNR approved shoreline and flood plain ordinances. But, it is not the intention of the BWSR to formally require the adoption of such ordinances as part of this planning activity. The plan must, however, recognize that compliance with these state mandated programs is an important element of watershed management.

Subpart 2.E. The BWSR recognizes that certain land uses and land practices may have an adverse impact on water quality, and it may be difficult to enforce restrictions concerning the degradation of water quality based on certain land use practices. These rules provide direction that local

communities adopt nuisance ordinances for the purpose of providing a mechanism through which local communities can legally abate such land use activities that will not allow it to meet its water quality goals.

Subpart 3 The rules referring to stormwater drainage and design performance standards are consistent with other sections of the rule which generally direct that these planning activities establish some type of standards that can be quantified. It is the BWSR's perspective that without measurable design and performance standards, no real in-roads into proper surface water management can be facilitated.

Subpart 4 The information program is consistent with the requirements of the state law. M.S. 103B.227, Subp 4 specifically requires WMOs to annually publish and distribute a written summary section regarding its activities to residents. It is the intention of the rule language associated with this information program, that the required written communication be distributed to parties that have both an active and a general interest in WMO activities. The media through which this communication can be distributed has been left to the discretion of the WMO and the WMO is encouraged to utilize whatever format is most cost effective to distribute this publication.

Subpart 5 The data collection program rules require WMOs to develop a program that can ascertain whether the water quality goals of the WMO are being achieved. The extent and associated cost of this monitoring program has been left up to the WMO. It is the BWSR's intention that the WMO will develop a program that will be responsive to its available resources and yet allow for a determination as to whether or not the water quality and quantity goals of the WMO are being met.

Subpart 6 The BWSR feels that these plans should assess the need for various management programs. This need must be tied to the WMO's approach to toward accomplishing its goals and objectives. As part of this planning activity, it is the intention of the BWSR that WMOs assess the need and extent for various management programs. However, the rules have intentionally not required the implementation of specific management programs that are known to have some level of benefit to water quantity or quality management.

Section 8410.0110 - Impact on Local Government

Summary of Content - This portion of the rule requires that the impact of plan implementation on local units of government be evaluated. Specifically, the administrative and financial capabilities of local units of government must be considered to establish the ability of these local units of government to implement the plan to the extent outlined within the plan.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires plans to specify schedules for amending the comprehensive plans and official controls of affected local governments.

Justification for Section 8410-0110 - The impact on local government section of this rule is intended to provide a mechanism through which administrative and financial resources of counties, cities, and townships can be evaluated in respect to the cost for implementation of a WMO plan. It is the BWSR's perspective that plans should realistically evaluate these concerns since many aspects of plan implementation

are passed down to other units of government. If affected local governments are not administratively or financially capable of carrying out their responsibilities, the plan will fail. This analysis should avoid such failures from occurring.

Section 8410.0120 - Implementation Priorities

Summary of Content - This portion of the rule requires that plans prioritize plan implementation components to make the best use of available local funding, prevent future water management problems from occurring and to ensure that regional, county, state and federal grant funding is properly targeted.

Reason for Inclusion - Public funding is limited and there are competing funding needs both within and outside of water management. It is prudent to set priorities so that best use of available funds is achieved.

Justification for Section 8410.0120 - Prioritization of plan implementation components is required as part of this section of the rule. This section should also be utilized to clearly describe the extent to which water resource management activities are needed and provide some indication of the extent to which funding is available to meet these needs.

Section 8410.0130 - Implementation Components

Summary of Content - This section of the rule requires that plans specify and outline the controls, responsibilities, schedules, capital improvement programs, enforcement actions, and administrative processes to be followed during the implementation of this plan.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires plans to contain objectives, policies, management principles, alternatives, a capital improvement program and standards and schedules for amending plans and controls of local government.

Justification for Section 8410.0130 - This section of the rule requires that the implementation plan address the components identified in Subpart 1 of this rule and for each of these components, define responsibilities for implementation, provide a schedule, define a capital improvement program necessary to respond to the implementation components, address regulatory enforcement issues and the administrative processes through which the WMO and local governmental units will interact. It is the BWSR's perspective that the text associated with this section of the rule is reasonably self explanatory.

Section 8410.0140 - Plan Amendments

Summary of Content - This section of the rule outlines the process through which amendments to the plan may be initiated and executed. The general amendment procedures, including amendment procedures for minor amendments to capital improvements, the form of the amendments, and the distribution requirements for the amendments are outlined.

Reason for Inclusion - M.S. 103B.231, Subd. 6 requires plans to set out a procedure for amending the plan. This section of the law also requires the BWSR to adopt rules for plan amendments, including the

public participation process.

Justification for Section 8410.0140

Subpart 2 This section of the rule defines the general amendment procedure for major amendments. It is the intent of this procedure to provide an opportunity for parties having an interest in water resource management to provide input and comment on any proposed plan amendments. Provision is also made to allow certain minor amendments to plans to be adopted through an expedited process to minimize unnecessary bureaucratic review.

Subpart 3 This section was added to allow minor amendments to a plan's capital improvement program when there has been general agreement to and public disclosure of the estimated costs of proposed improvements.

Subpart 4 The direction provided regarding the form and distribution of amendments is as shown to maintain consistency, minimize confusion and provide direction to WMOs when plan amendments are contemplated.

Section 8410.0150 - Annual Reporting Requirements

Summary of Content - This section of the rule indicates that within 120 days of the end of the WMOs fiscal year, each WMO shall submit to the BWSR a financial report, an activity report, and an audit report for the preceding fiscal year. The content requirements for the annual financial audit and activity reports are provided along with the procedures the BWSR will follow should a state audit of a given WMO be considered.

Reason for Inclusion - M.S. 103B.231, Subd. 14 requires the BWSR to adopt rules establishing the requirements of financial reports, financial audits and annual activity reports.

Justification for Section 8410.0150 - The BWSR and advisory committee spent considerable time drafting this portion of the rule. Earlier drafts of the rule provided more prescriptive language regarding the content for annual financial reports. This final language outlines the need for general types of information, but does not specifically require the report to be completed in a specific format. It is anticipated that at least major sections of the annual financial report could be copied directly from a certified public accountant or state auditor report that would typically be prepared in any given year.

The BWSR is extremely interested about the inclusion of an annual activity report into the WMO's annual report. It is the perspective of the BWSR that the requirement for the WMO to provide an assessment of the previous year's annual work plan, and a projected work plan for the coming year will provide the WMOs with the mechanism through which they can establish goals and objectives for coming years, provide themselves with an opportunity of maintaining a certain amount of accountability towards achieving those goals identified. This information will also be useful to the BWSR in evaluating the activities of WMOs throughout the Twin City Metropolitan area.

CONTENT OF LOCAL PLANS

Section 8410.0160 - General Structure

Summary of Content - This section of the rule outlines the general content requirements for local plans. It also indicates that local plans must be prepared and adopted within two years of BWSR's approval of the last WMO plan that affects the local unit of government. Further breakdown of the structure for local plans is deferred to Section 8410.0170 of the rules.

Reason for Inclusion - M.S. 103B.235 provides certain guidance for local plans to the degree specified in the WMO plan. This section is needed to provided additional guidance for local plans in the event that the WMO plan is vague in some respects.

Justification for Section 8410.0160 - It is the intention of this section of the rule to provide an overall description of the content of a local plan. Local plan preparation, approval, and adoption within two years of BWSR's approval of the last WMO plan that affects the local unit of government was thoroughly considered. Discussion ensued over the instance where a community was covered by four different WMOs, three of the four plans had been completed, but the fourth may never be completed. It was the BWSR's perspective that such instances can be resolved on a case by case basis rather than incorporating some specific prescriptive language in the rule to address the issue.

Section 8410.0170 - Structure

Summary of Content - This section of the rule outlines the specific content requirements for local plans. The content requirements parallel the content requirements for WMO plans taking into additional consideration that the local plan must be consistent with water resource management approach outlined in the WMO plan. Specifically, the following sections must be included in each local plan; purpose, water resource related agreements, executive summary, land and water resource inventory, establishment of policies and goals, assessment of problems, corrective actions, financial considerations, implementation priorities, implementation program, and amendment procedures. The submittal and review process to be followed are also described in this section of the rule.

Reason for Inclusion - M.S. 103B.231, Subd. 6, (b) requires the BWSR to adopt rules which include the requirements for implementation of WMO plans. M.S. 103B.235 requires local governments to prepare local water plans in conformance with overriding WMO plans. M.S. 103B.235, Subd. 2, (b) specifically requires the BWSR to adopt rules establishing minimum local plan standards.

Justification for Section 8410.0170 - It was the BWSR's intention that this section provide clear direction into the outline of a local water resource management plan. Local units of government preparing these local plans may adopt portions of WMO plans by reference if the sections of the WMO plan are consistent with the local plan perspectives and the WMO plan provides for such adoption by reference. The rationale for the local plan content is consistent with that of the WMO plan content.

Section 8410.0180 - Determinations of Failure to Implement

Summary of Content - This section of the rule clarifies BWSR's authority and responsibility when a plan is not being implemented for a watershed either because there is not a WMO, because the WMO has not adopted an approved plan, or because the approved plan is not being carried out. The responsibilities of the BWSR staff and Board are outlined for such cases.

Reason for Inclusion - M.S. 103B.231, Subd. 10 requires the BWSR to adopt rules establishing standards and criteria for making determinations on whether WMOs are properly implementing their plans.

Justification for Section 8410.0180 - This portion of the rule provides an opportunity for the BWSR to take action if a plan has not been prepared, has not been adopted or approved, or because a plan is not being properly implemented. It was the intention of the BWSR to develop a reasonably formal process that must be followed in order for a determination of failure to be made. It was also the BWSR's intention that the BWSR Board only become involved if a number of preliminary reviews and required meetings cannot resolve the problem in a less formal manner.

SECTION III - IMPACT ON AGRICULTURE AND SMALL BUSINESS

As part of the agency's administrative rule making procedures and responsibilities, Minnesota Statutes Chapter 14 requires that the proposed rules be evaluated for potential impacts on agricultural land and for impacts on small businesses. Sections III., A. and III., B. address this requirement.

A. **Impact on Agricultural Lands** - Minnesota Statutes Section 14.11, Subd. 2 is the statutory reference for rule impacts on agricultural land. That subdivision refers to Minnesota Statutes Sections 17.80 to 17.84, which discusses the State's agricultural land preservation and conservation policy in detail. It is the BWSR's finding that these rules are consistent with the State's policy of preservation and conservation of agricultural land.

The rules main potential impact on agricultural land is with respect to the requirements of Part 8410.0100, Subpart 1. This part of the rule requires that WMO's adopt or require affected cities and towns to adopt controls to address excess soil erosion from agricultural land. The rule does not specify what the controls must consist of or how they must be enforced. This is left up to the discretion of the WMO based upon the scope of the problem as identified in the plan development process.

It is the intention of the BWSR to provide guidance documents in the form of model ordinances based on the "Soil Loss Limits Act" (MS 103F.401 to 103F.455), applicable zoning and planning enabling laws (MS 366.10 to 366.19; MS 394.21 to MS 394.37; and MS 462.351 to 462.365) or applicable nuisance laws (MS 561.19 and MS 609.74). Due to the optional approach the rule allows, it is difficult to access any monetary impact on individual agricultural producers. However, it is likely that most corrective measures supported by local governments to date rely on the availability of public cost-share funds before mandatory compliance is effectuated. This approach is advocated by the BWSR at the present in order to lessen the cost of corrective measures. Agricultural experts generally agree that the implementation of soil conservation practices are economically beneficial to long term agricultural production regardless whether there are publicly financed economic incentives available.

B. **Impact on Small Business** - Minnesota Statutes Section 14.115 requires that agencies proposing rules which may impact small businesses consider certain methods for reducing the impact of the

rule on small businesses. Presently, land developers are generally required to comply to some degree with local erosion control ordinances and standards. The rule requires that the WMO adopt a uniform set of guidelines for erosion control. This may actually reduce erosion control costs to land developers in the long run, since their consultants and contractors will not have to deal with local controls that vary in scope. It is the opinion of the BWSR that the rules do not significantly impact small businesses and so there is no need to consider methods for reducing impacts. However, the rule does not prohibit a WMO from imposing special requirements at targeted small businesses which may impact them. This is entirely an issue that a WMO or member local units of government must consider.

SECTION IV - FISCAL NOTE

The foregoing rules will mandate that local government take certain actions, some of which may result in local government incurring costs beyond what they have historically spent on executing their obligations with respect to the Metropolitan Water Management Act. However, it is difficult to estimate such costs due to a number of factors including:

- Some watershed management plans of WMOs already have implemented planning and programming in excess of what these rules require.
- 10 of the 46 WMOs are watershed districts created pursuant to MS 103D and so are already required to file annual reports, most of which would comply with the reporting requirements specified in the rule.
- Each watershed has different water resource issues and problems, thus the solutions proposed by each WMO will vary in cost.
- Many of the plans that will need to be amended to be brought into conformance with the rule primarily because the original act was not interpreted properly when their first generation watershed plan was developed.

The probable increased costs to local government can be placed in three categories: cost to revise joint powers agreements, costs related to annual reports, and costs related to second generation plans.

A. **Cost to Revise Joint Powers Agreements** - Chapter 601 of the Laws of 1990 required the BWSR to develop rules to guide the content of joint powers agreements (JPAs). Chapter 601 established the following voting requirements: 1) policy decisions are not allowed to require more than a majority vote, and 2) decisions on capital improvements may not require more than a two-thirds vote. Since all 36 existing joint powers agreements of the require higher voting requirements (many require unanimous vote) all will have to revise their JPAs. Most other aspects of the agreements should not require revision. Therefore it is estimated that the revision of the 36 JPAs will be about $1000 each, or a total one-time cost of $36,000.

B. **Cost to File Annual Reports and Audits** - There will be no appreciable increased cost for annual reporting and auditing to the ten WMOs that were originally created as watershed districts. The 36 JPA WMOs may experience some increase in costs depending upon whether or not they currently are requiring the preparation of annual reports or audits. It is difficult to estimate the costs of annual reports, since some WMOs are very active and some may only meet once a year.

Likewise some have no budget and some do. Those that do not directly expend funds are not required to file financial reports and audits. Usually, the WMOs who have no established budget require each member to pay for any expenses incurred on an individual member basis, based upon prearranged formulas. In such cases the expenditures are accounted for in the member community's normal annual audit process. The BWSR estimates that 25 percent of the JPA WMOs (about 9 WMOs) operate this way. Therefore based upon the above considerations, the increased costs to local government will be approximately $108,000 in accordance with the following calculations:

Unit of Government	Number	Audit	Financial Report	Annual Totals
Watershed Districts	10	$ 0	$ 0	$ 0
JPA WMOs	27	$2000	$1500	$ 94,500
JPA WMOs	9	$ 0	$1500	$ 13,500
Total =				**$108,000**

C. **Cost of Preparation of Second Generation Plans** - The rules define what "second generation" watershed management plans must contain and are effective after Jan. 1, 1995. The rules require that the plans be brought into compliance in accordance with either the schedule specified in the first generation plan or, if there was no schedule, within ten years after the BWSR approved the first generation plan. Consequently, most plans will be have to revised to be consistent with the rule between 1995 and 2000. The cost will vary between WMOs since some plans (at least 6) will only require cosmetic revisions due to the comprehensive approach that was taken with the first generation plan. According to a random survey, the cost of the first generation plans ranged from as low as $10,000 to as high as $120,000. Given this range, the BWSR estimates that a realistic average cost was near $40,000 per plan. It is likely that the second generation plans should average no more than 50% to 75% of the original cost, or $30,000 at the outside, not adjusted for inflation. For 46 plans over a five year period, the total annualized average cost should be approximately $276,000 each year from 1995 to 2000.

A major purpose of the Metropolitan Water Management Act is to reduce the overall cost of water management through the development and implementation of the required watershed management plans. This can be accomplished only through a coordinated effort among affected local units of governments to reduce or eliminate duplication of effort, focus economic resources, prioritize capital improvements and provide for adequate planning to prevent future problems. It is the opinion of the BWSR that the costs of the required planning activity will be more than offset by the benefits.

In the Matter of the Rules
of the Board of Water and
Soil Resources Governing
Water Management in the
Metropolitan Area.
Minnesota Rules Chapter 8410

DECLARATION
OF COUNSEL

I have examined the above-captioned rule and the supporting rule-making record. I conclude that the Administrative Procedure Act and Minnesota Rules chapter 2010 have been followed.

Dated: June 2, 1992

Q. W. Clapp III

Special Assistant
Attorney General

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767
Fax (612) 297-5615

May 28, 1992

To: Bill Clapp, Special Assistant Attorney General

From: Ron Harnack, Executive Director

Subject: AG's Review of the Metro Water Management Rules

I am herewith submitting Minnesota Rule Chapter 8400 to the attorney general for approval pursuant to Minnesota Rule 2010.0330 and MS Section 14.10. Please note the following documents enclosed as part of this submittal:

1. Copy of notice of solicitation of outside information as published in the State Register. (Nov. 13, 1989, pages 1182-1183)

2. The certificate of the Board's resolution delegating Ron Harnack to give notice of intent to adopt without a public hearing. (Dec. 18, 1991)

3. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached. (no date)

4. Notice of intent to adopt the rule without a public hearing. (Signed March 20, 1992)

5. The Statement of Need and Reasonableness (Dated March 17, 1992)

6. The affidavit of mailing the notice of intent to adopt a rule without a public hearing to the persons on the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a.

7. A copy of the notice of intent to adopt the rule without a public hearing as published in the State Register. (Published in State Register April 6, 1992, pages 2193-2194.)

8. Four copies of the rule as adopted. (Note: No changes were made from the version published in the State Register.)

9. A copy of the certificate of resolution adopting the rule and authorizing Ron Harnack to modify the rule as needed to secure the approval of the attorney general. (Dated May 27, 1992)

10. Findings of fact, conclusions and order adopting the rule. (Dated May 27, 1992)

Please let Bruce know if you need any further documentation. Thanks again for all your assistance in this process long process. Your help has been invaluable. We look forward to receipt of a copy of your anticipated memo of approval and filing with the secretary of state.

Encl

cc Bruce Sandstrom
Jim Birkholz

a:rulelist.ag

Regional Offices

Northwest Region
1106 Paul Bunyan Drive, NE
Bemidji, MN 56601
218-755-3963

Northeast Region
394 South Lake Avenue
Room 403
Duluth, MN 55802
218-723-4752

West Central Region
503 Washington Street
Brainerd, MN 56401
218-828-2604

South Central Region
Box 756
New Ulm, MN 56073
507-359-6074

Southeast Region
Friedell Bldg., Room 100
1200 S. Broadway
Rochester, MN 55904
507-285-7458

Southwest Region
Box 267
1400 E. Lyon Street
Marshall, MN 56258
507-537-6060

East Central Region
Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, MN 55107
612-296-3767

ATTY GENERAL-

1 JUN 92 2 3 26

An Equal
Opportunity Employer

Department of Trade and Economic Development

Minnesota Job Skills Partnership Board

Notice of Annual Meeting

The annual meeting of the Minnesota Job Skills Partnership Board will be held on Monday, November 20, 1989, at 1:00 p.m. in Room 300 South State Office Building, St. Paul.

The Minnesota Job Skills Partnership Board solicits grant proposals from educational and other non-profit organizations for training programs designed for specific businesses. Please contact the Partnership office at 612/296-0388 for details regarding grant applications.

Following are application deadline dates and Board meeting dates for 1990:

Deadline Dates for New Grant Applications	MJSP Board Meeting Dates
• January 19, 1990	• February 20, 1990
• April 13, 1990	• May 15, 1990
• July 20, 1990	• August 21, 1990
• October 19, 1990	• November 20, 1990 (annual meeting)

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under *Minnesota Statutes* § 169.825. Order No. 75451

Whereas, the Commissioner of Transportation has made his Order No. 72156, dated April 8, 1987, which order has been amended by Orders Nos. 73139, 74653, 74846, 75024, 75110, 75193, and 75314 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under *Minnesota Statutes* § 169.825, and

Whereas, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under *Minnesota Statutes* § 169.825.

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 72156 is further amended this date by adding the following designated streets and highway routes, or segment of routes, as follows:

COUNTY ROADS

WATONWAN COUNTY

• C.S.A.H. 2 FROM THE WEST JCT. T.H. 60 TO EAST JCT. T.H. 60 IN THE CITY OF BUTTERFIELD, MINNESOTA (12 MONTH).

Dated: 3 November 1989

Leonard W. Levine
Commissioner

Board of Water and Soil Resources

Meeting Notice

The Board of Water and Soil Resources will hold their November 22, 1989 regularly scheduled monthly meeting at the Holiday Inn-East, St. Paul, Minnesota.

Board of Water and Soil Resources

Outside Information or Opinions Sought Regarding Proposed Rule Governing Local Water Resources Protection and Management Program

NOTICE IS HEREBY GIVEN that the Board of Water and Soil Resources is seeking information or opinions from sources outside

the agency in preparing to propose the adoption of the rule governing grants to counties to implement comprehensive local water plans. The adoption of the rule is authorized by *Minnesota Statutes, Laws of 1989*, Chapter 326, which requires the agency to adopt a rule which specifies the process and priorities for awarding grants to counties for implementing comprehensive local water plans.

The Board requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Greg Larson, Board of Water and Soil Resources, 155 South Wabasha Street, Suite 104, St. Paul, MN 55107. Oral statements will be received during regular business hours over the telephone at 296-3767 and in person at the above address.

All statements of information and opinions shall be accepted until November 30. Any written material received by the Board of Water and Soil Resources shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 13 November 1989

Jim Birkholz, Executive Director
Board of Water and Soil Resources

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. §14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of $15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Awards of contracts and advertised bids for commodities and printing, as well as awards of professional, technical and consulting contracts, appear in the midweek STATE REGISTER Contracts Supplement, published every Thursday. Call (612) 296-0931 for subscription information. Thank you.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

Commodity: Laboratory casework
Contact: John Bauer 296-2621
Bid due date at 2pm: November 21
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 07300 65134 1

Commodity: Mobile radios
Contact: Pam Anderson 296-1053
Bid due date at 2pm: November 21
Agency: Public Safety Department
Deliver to: St. Paul
Requisition #: 07500 63375

Commodity: Truck w/van body
Contact: Mary Jo Bruski 296-3772
Bid due date at 2pm: November 21
Agency: DHS-Regional Treatment Center
Deliver to: Brainerd
Requisition #: 55304 08368 1

Commodity: Light fixtures
Contact: Joan Breisler 296-9071
Bid due date at 2pm: November 20
Agency: Military Affairs Department
Deliver to: Little Falls
Requisition #: 01000 06079

Commodity: Compartment/steam cooker
Contact: Joan Breisler 296-9071
Bid due date at 2pm: November 20
Agency: Correctional Facility
Deliver to: Faribault
Requisition #: 02310 17370

Commodity: Nicotine air samplers
Contact: Joseph Gibbs 296-3750
Bid due date at 2pm: November 22
Agency: Health Department
Deliver to: Minneapolis
Requisition #: 12500 42513

CERTIFICATE OF THE
BOARD OF WATER AND SOIL RESOURCES
AUTHORIZING RESOLUTION

I, D. James Nielsen, do hereby certify that I am the Chair of the Minnesota Board of Water and Soil Resources (Board), a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board duly and properly called and held on the 18th day of December 1991, that a quorum was present, and that a majority of those present voted for the below resolution which has not been rescinded or modified.

"BE IT RESOLVED, that with respect to the promulgation of rules governing the management of water in the Seven County Metropolitan Area, Ronald D. Harnack, the executive Director of the Minnesota Water and Soil Resources Board, is hereby granted the authority and directed to sign and to give Notice of the Board's Intent to Adopt a Rule Without a Public Hearing and to simultaneously give Notice to Adopt Rules With a Public Hearing upon receiving 25 or more requests for hearing and cancel said hearing if fewer than 25 persons request a hearing; to publish said Notices in the State Register; and to perform any and all acts incidental thereto. "

IN WITNESS THEREOF, I have hereunto subscribed my name this 18th day of December 1991.

D. James Nielsen, Chair
MN Board of Water and Soil Resources

Attested By:

Board Member

a:resoluti.on

STATE OF MINNESOTA
COUNTY OF RAMSEY

MINNESOTA BOARD OF WATER
AND SOIL RESOURCES

In the Matter of the Proposed Rules Governing the Management of Water in the Seven County Metropolitan Area, Minnesota Rules Chapter 8410

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING.

NOTICE TO ADOPT RULES FOR THE MANAGEMENT OF WATER IN THE SEVEN COUNTY METROPOLITAN AREA.

Notice of Intent to Adopt Proposed Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Water and Soil Resources (Board) proposes to adopt Minnesota Rules, parts 8410.0010 to 8410.0180 without a public hearing unless 25 or more persons submit written requests for a public hearing with respect to the proposed rules. The Board has determined that the proposed rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes §§ 14.22 to 14.28. The statutory authority of the Board to adopt the proposed rules is contained in Minnesota Statutes, § 103B.101, Subd. 7; § 103B.211, Subd. 1; § 103B.231, Subd. 6, 10 and 14; and § 103B.227, Subd. 3.

Interested persons shall have until 4:30 p.m. May 6, 1992 to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portions of the proposed rules being addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

Any person may make a written request for a public hearing on the proposed rules within the 30-day comment period. Any person requesting a public hearing must state his or her name, address, and telephone number and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a person desires that a hearing be held on only a portion of the proposed rules, it is requested that the Board be informed of the specific portion of the rules on which a hearing is being requested at the time the hearing request is made. This will enable the Board to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by 4:30 p.m. May 6, 1992, thus necessitating that one be held with respect to the proposed rules. If a hearing is required, the Board will proceed pursuant to Minnesota Statutes, §§ 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Bruce Sandstrom
Minnesota Board of Water and Soil Resources
155 South Wabasha Street, Suite 104
St. Paul, Minnesota 55107
(612) 297-4958

A copy of the proposed rules are attached to this notice. A free copy of the proposed rules may be obtained from the Board by writing or telephoning Bruce Sandstrom at the address or telephone number listed above.

The proposed rules govern the content of amendments to watershed management plans for 46 Watershed Management Organizations (WMOs) in the seven county metropolitan area. The rules also govern the content of WMO annual financial, audit and activity reports; how WMO members may be removed; the content of WMO joint powers agreements; and standards and criteria for making determinations of whether watershed plans are being implemented.

(12) A STATEMENT OF NEED AND REASONABLENESS (SONAR) that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and may be obtained from the Board by writing or telephoning Bruce Sandstrom at the address or telephone number listed above.

(9) IF NO HEARING IS REQUIRED, the Board will submit to the Attorney General the proposed rules and notice as published, the rules as proposed for adoption, any written comments received by the Board, the statement of need and reasonableness, and a statement explaining any modifications to the proposed rules. The Attorney General will approve or disapprove the rules as to legality and form, including the issue of substantial change and determine whether the Board has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General must submit the written request to Bruce Sandstrom at the address listed above. If the proposed rules have been modified, the notice will also state that fact and will state that a free copy of the proposed rules, as modified, will available upon request from the Board.

Local Government Considerations (13)

The Board's evaluation of the impact of the proposed rules on the expenditure of public monies by local public bodies is addressed in the statement of need and reasonableness. There will be a direct cost to some local units of government and this will vary according to such factors as the size of the watershed, the number of communities in each WMO, whether the WMO is a watershed district and the degree to which a WMO's original plan met the intent of the Metropolitan Waters Management Act.

Agricultural Land (15)

The proposed rules will not have an impact on agricultural land; therefore, no further information need be provided under Minnesota Statutes, § 14.11.

Small Business Considerations (14)

The Board is subject to Minnesota Statutes, § 14.115 regarding small business considerations in rule making. The Board's evaluation of the applicability of the methods contained in Minnesota Statutes, § 14.115, Subd. 2, for reducing the impact of the proposed rules on small business is addressed in the statement of need and reasonableness. It is the Board's conclusion that the rules have insignificant impact on small businesses.

Dated: 3/12/92

Ronald D. Harnack, Executive Director
Minnesota Board of Water and Soil Resources

a:sonar.not

Roger Larson, P.E.
Consulting Engineer
606 1st Avenue North
Sartell, Minnesota 56377

BOARD OF WATER AND SOIL RESOURCES
155 SOUTH WABASHA STREET
SUITE 104
ST. PAUL, MINNESOTA 55107

In the Matter of the Proposed Adoption of the Rule of the Board of Water and Soil Resources Relating to Metropolitan Area Local Water Management

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CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Bruce Sandstrom, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1.a. and 14.22 or 14.30, that their names be placed on the Minnesota Board of Water and Soil Resources rulemaking mailing list, is accurate, complete, and current as of this 30th day of March, 1992.

Bruce Sandstrom
Acting Supervisor, Metro Region

MARY T. MILLER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 4-21-9

Subscribed and sworn to before me this 27 day of May 1992

Mary T. Miller

BOARD OF WATER AND SOIL RESOURCES
155 SOUTH WABASHA STREET
SUITE 104
ST. PAUL, MINNESOTA 55107

In the Matter of the Proposed Adoption of the Rule of the Board of Water and Soil Resources Relating to Metropolitan Area Local Water Management

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AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
)ss
COUNTY OF RAMSEY)

Lynette Morrisette, being sworn, says:

That on the 30th day of March, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, she mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1.a. and 14.22 or 14.30, that their names be placed on the Minnesota Board of Water and Soil Resources rulemaking mailing list.

Lynette M. Morrisette
Secretary

MARY T. MILLER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 4-21-92

Subscribed and sworn to before me this 27 day of May 19 92

Mary T Miller

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Water and Soil Resources

Proposed Permanent Rules Relating to Waters; Metropolitan Area Local Water Management

Notice of Intent to Adopt Proposed Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Water and Soil Resources (Board) proposes to adopt *Minnesota Rules*, parts 8410.0010 to 8410.0180 without a public hearing unless 25 or more persons submit written requests for a public hearing with respect to the proposed rules. The Board has determined that the proposed rules will be noncontroversial in nature and has elected to follow the procedures set forth in *Minnesota Statutes* §§ 14.22 to 14.28. The statutory authority of the Board to adopt the proposed rules is contained in *Minnesota Statutes*, § 103B.101, Subd. 7; § 103B.211, Subd. 1; § 103B.231, Subd. 6, 10 and 14; and § 103B.227, Subd. 3.

Interested persons shall have until 4:30 p.m. May 6, 1992 to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portions of the proposed rules being addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

Any person may make a written request for a public hearing on the proposed rules within the 30-day comment period. Any person requesting a public hearing must state his or her name, address, and telephone number and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a person desires that a hearing be held on only a portion of the proposed rules, it is requested that the Board be informed of the specific portion of the rules on which a hearing is being requested at the time the hearing request is made. This will enable the Board to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by 4:30 p.m. May 6, 1992, thus necessitating that one be held with respect to the proposed rules. If a hearing is required, the Board will proceed pursuant to *Minnesota Statutes*, §§ 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Bruce Sandstrom
Minnesota Board of Water and Soil Resources
155 South Wabasha Street, Suite 104
St. Paul, Minnesota 55107
(612) 297-4958

A copy of the proposed rules are attached to this notice. A free copy of the proposed rules may be obtained from the Board by writing or telephoning Bruce Sandstrom at the address or telephone number listed above.

The proposed rules govern the content of amendments to watershed management plans for 46 Watershed Management Organizations (WMOs) in the seven county metropolitan area. The rules also govern the content of WMO annual financial, audit and activity reports; how WMO members may be removed; the content of WMO joint powers agreements; and standards and criteria for making determinations of whether watershed plans are being implemented.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

A STATEMENT OF NEED AND REASONABLENESS (SONAR) that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and may be obtained from the Board by writing or telephoning Bruce Sandstrom at the address or telephone number listed above.

IF NO HEARING IS REQUIRED, the Board will submit to the Attorney General the proposed rules and notice as published, the rules as proposed for adoption, any written comments received by the Board, the statement of need and reasonableness, and a statement explaining any modifications to the proposed rules. The Attorney General will approve or disapprove the rules as to legality and form, including the issue of substantial change and determine whether the Board has the authority to adopt the rules and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General must submit the written request to Bruce Sandstrom at the address listed above. If the proposed rules have been modified, the notice will also state that fact and will state that a free copy of the proposed rules, as modified, will be available upon request from the Board.

Local Government Considerations

The Board's evaluation of the impact of the proposed rules on the expenditure of public monies by local public bodies is addressed in the statement of need and reasonableness. There will be a direct cost to some local units of government and this will vary according to such factors as the size of the watershed, the number of communities in each WMO, whether the WMO is a watershed district and the degree to which a WMO's original plan met the intent of the Metropolitan Waters Management Act.

Agricultural Land

The proposed rules will not have an impact on agricultural land; therefore, no further information need be provided under *Minnesota Statutes*, § 14.11.

Small Business Considerations

The Board is subject to *Minnesota Statutes*, § 14.115 regarding small business considerations in rule making. The Board's evaluation of the applicability of the methods contained in *Minnesota Statutes*, § 14.115, Subd. 2, for reducing the impact of the proposed rules on small business is addressed in the statement of need and reasonableness. It is the Board's conclusion that the rules have insignificant impact on small businesses.

Dated: 20 March 1992

Ronald D. Harnack, Executive Director
Minnesota Board of Water and Soil Resources

Rules as Proposed (all new material)

8410.0010 SCOPE.

Subpart 1. **Application.** Upon adoption, parts 8410.0010 to 8410.0180 apply to the general administration of metropolitan watershed management activities and to amendments to existing plans made after January 1, 1995. If no plan has been submitted to the board by the effective date of parts 8410.0010 to 8410.0180, any plan thereafter submitted must be in compliance with parts 8410.0010 to 8410.0180. A watershed management organization must amend its plan consistent with parts 8410.0010 to 8410.0180 and submit amendments to the board according to its amendment schedule and amendment procedures outlined in part 8410.0140, but not later than ten years from the date of initial plan approval.

Subp. 2. **Failure to implement plans.** When the board determines that a plan is not being properly implemented under an action initiated according to part 8410.0180, and there is reason to believe that an improved plan would lead to improved water management, the board may direct the responsible authorities to develop an amended plan within a reasonable time frame. In making this determination, the board must consider items including, but not limited to:

A. when the plan was approved and adopted;

B. the status of local plan development and adoption;

C. the scope and anticipated costs to amend;

D. the availability of funds; and

E. the potential short- and long-term adverse impacts on the natural resources of the affected watershed.

8410.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in *Minnesota Statutes*, section 103B.205, apply to parts 8410.0010 to 8410.0180.

Subp. 2. **Board.** "Board" means the Minnesota Board of Water and Soil Resources created by *Minnesota Statutes*, section 103B.101.

Subp. 3. **Capital improvement.** "Capital improvement" means a physical improvement that is not directed toward maintenance of an in-place system during its life expectancy.

Subp. 4. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council as created by *Minnesota Statutes*, section 473.123.

Subp. 5. **Flooding problem.** "Flooding problem" means a flooding problem that has been identified as a problem by the watershed management organization or local unit of government.

Subp. 6. **Groundwater plan.** "Groundwater plan" means a county plan adopted under *Minnesota Statutes*, section 103B.255.

Subp. 7. **Local comprehensive plan.** "Local comprehensive plan" has the meaning given "comprehensive plan" in *Minnesota Statutes*, section 473.852, subdivision 5.

Subp. 8. **Local government unit or unit.** "Local government unit" or "unit" has the meaning given it in *Minnesota Statutes*, section 473.852, subdivision 7.

Subp. 9. **Metropolitan Water Management Act.** "Metropolitan water management act" has the meaning given it in *Minnesota Statutes*, sections 103B.201 to 103B.255.

Subp. 10. **Minor plan amendments.** "Minor plan amendments" means items such as recodification of the plan, revision of a procedure meant to streamline administration of the plan, clarification of the intent of a policy, the inclusion of additional data not requiring interpretation, or any other action that will not adversely affect a local unit of government or diminish a water management organization's ability to achieve its plan's goals or implementation program.

Subp. 11. **Minor watershed unit.** "Minor watershed unit" means each of the approximately 5,600 minor watershed units delineated on the state watershed boundaries map prepared under the requirements of Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).

Subp. 12. **Metropolitan Urban Service Area or area.** "Metropolitan Urban Service Area" or "area" has the meaning given on maps prepared by the Metropolitan Council. The latest version of the map identifying the area is incorporated by reference and is subject to periodic change. The latest version of the map identifying the area is available from the state law library through the Minitex interlibrary loan system. The area is the seven-county metropolitan area that the council is committed by policy to provide regional planning for sanitary sewer, highway, transit, park, and airport facilities.

Subp. 13. **Natural surface water storage and retention systems.** "Natural surface water storage and retention systems" means public waters and wetlands as defined in *Minnesota Statutes*, section 103G.005, subdivisions 15 and 19.

Subp. 14. **Official controls.** "Official controls" has the meaning given it in *Minnesota Statutes*, section 473.852.

Subp. 15. **Plan.** "Plan" means the watershed management plan prepared by a watershed management organization or county as required by *Minnesota Statutes*, section 103B.231, subdivision 1.

Subp. 16. **Plan review authorities.** "Plan review authorities" means the Metropolitan Council, the Department of Health, the Department of Natural Resources, the Pollution Control Agency, the Board of Water and Soil Resources, and counties, cities, towns, and soil and water conservation districts partially or wholly within the watershed management organization as defined in *Minnesota Statutes*, section 103B.231, subdivisions 7, 8, and 9.

Subp. 17. **Public waters.** "Public waters" means waters of the state identified as public waters under *Minnesota Statutes*, section 103G.005, subdivision 15.

Subp. 18. **Seven-county metropolitan area.** "Seven-county metropolitan area" means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, excluding the corporate boundaries of the city of New Prague.

Subp. 19. **Subwatershed unit.** "Subwatershed unit" means a hydrologic area less than the entire area under the jurisdiction of a watershed management organization.

Subp. 20. **Watershed.** "Watershed" means a drainage area with boundaries that are substantially coterminous with those of an aggregation of contiguous minor watershed units possessing similar drainage patterns and that cross the borders of two or more local government units.

Subp. 21. **Watershed district.** "Watershed district" means a district established under *Minnesota Statutes*, chapter 103D.

Subp. 22. **Watershed management organization or organization.** "Watershed management organization" or "organization" means: (1) a watershed district wholly within the metropolitan area; or (2) a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district that has the

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characteristics and the authority specified under *Minnesota Statutes*, section 103B.211. Counties may be watershed management organizations if a joint powers watershed management organization does not perform and the responsibility for plan preparation is deferred to the counties. Lake improvement or conservation districts are not watershed management organizations.

Subp. 23. **Wetlands.** "Wetlands" means waters of the state identified as wetlands under *Minnesota Statutes*, section 103G.005, subdivision 19.

Subp. 24. **Wetland banking system.** "Wetland banking system" means an accounting system established by a unit of government for the purpose of tracking and managing net losses and gains to wetland values that occur as a result of development.

8410.0030 CONTENT OF JOINT POWERS AGREEMENTS.

Subpart 1. **Requirements.** In addition to a description of any authorities adopted under the content requirements of joint powers agreements as outlined in *Minnesota Statutes*, section 103B.211, subdivision 1, joint powers agreements establishing a watershed management organization must, at a minimum, contain the following items:

A. a purpose statement consistent with *Minnesota Statutes*, section 103B.201;

B. a complete legal description defining the boundary of the organization;

C. a requirement to adopt rules of order and procedure;

D. a process for establishing an annual budget and work plan;

E. a formula for determining each member's share of the annual operating budget;

F. a statement of how member appointees are to be compensated;

G. a procedure providing for the establishment of citizen and technical advisory committees or other means of public participation;

H. a section defining the powers and duties of the organization;

I. a section establishing the duties and terms of the officers of the organization;

J. a notification process on the location and time of meetings;

K. a section defining the voting requirements for decision making and capital improvements consistent with *Minnesota Statutes*, section 103B.211, subdivision 1, paragraph (c);

L. a section outlining meetings to be scheduled at least annually;

M. the process and responsibilities of the organization and its members for filling vacancies consistent with *Minnesota Statutes*, section 103B.227, subdivisions 1 and 2;

N. the duration of the agreement and a process for dissolution that provides for at least 90 days' notice of the intent to dissolve to the affected counties and the board; and

O. a section defining how the membership will be represented, with the total number of representatives to be at least three.

Subp. 2. **Updating.** Joint powers agreements must be updated if necessary to be in conformance with this chapter no later than January 1, 1993, or one year after adoption of chapter 8410, whichever is later.

Subp. 3. **County membership.** A county may be a member of a joint powers agreement organization when the conditions described in *Minnesota Statutes*, section 103B.211, subdivision 3, are present.

8410.0040 REMOVAL OF ORGANIZATION REPRESENTATIVES.

A manager of a watershed district or a member of a joint powers board may be removed from the position by the appointing authority before term expiration for violation of a code of ethics of the watershed management organization or appointing authority or for malfeasance, nonfeasance, or misfeasance, after being provided an opportunity for hearing before the appointing authority. Managers holding the position as an elected official who are not reelected, or are serving an indefinite term at the pleasure of the appointing authority, may be removed by the appointing authority at will. A decision of the appointing authority may be appealed to the Board of Water and Soil Resources.

CONTENT OF WATERSHED MANAGEMENT ORGANIZATION PLANS

8410.0050 EXECUTIVE SUMMARY.

Each plan must have a section entitled "Executive Summary." The summary should outline the purpose of the watershed management organization; the membership of the organization's board of managers; the general boundaries of the organization; a brief history of the organization; a summary of the organization's goals, problems, and potential solutions; and the general content of required local plans.

8410.0060 LAND AND WATER RESOURCE INVENTORY.

Subpart 1. **Required.** Each plan must contain an inventory of water resource and physical factors affecting the water resources based on existing records and publications. If data publications and maps are available at a convenient central location, they may be included by reference. The plan must include a brief summary of the data and must identify where the publication can be obtained. At a minimum, the information in subparts 2 to 11 must be included in the plan. Subparts 2 and 4, item E, may be in the local plan instead of the watershed management organization plan.

Subp. 2. **Precipitation.** Each plan must include precipitation data normally used in the seven-county metropolitan area for hydrologic and hydraulic design.

Subp. 3. **General geology and topographic data.** Each organization plan shall contain a summary describing the general topographic relief, geology, aquifers, and all known groundwater and surface water connections. The summary should reference available publications and maps where data may be available in greater detail. A map defining appropriate subwatershed units within the organization must be included.

Subp. 4. **Surface water resource data.** Necessary surface water data within the watershed includes:

A. a map of the public waters and public ditch systems established under *Minnesota Statutes*, chapter 103D or 103E, including the location of existing dams and control structures;

B. a copy of the National Wetlands Inventory Map produced by the United States Fish and Wildlife Service and, if considered useful by the organization, a copy of the Metropolitan Mosquito Control District Mosquito Control Wetland Inventory;

C. either an inventory of the functional values of the wetlands present, a provision for a phased project to create the inventory within a given time frame, or the adoption of a specific process to identify the functional values on a case-by-case basis for the review of individual project proposals, all of which must be consistent with *Minnesota Statutes*, section 103B.3355;

D. a table of the major hydrologic characteristics of public waters if provided by the Department of Natural Resources in a format that can be readily incorporated in a plan;

E. maps showing the areas served by each existing stormwater system that identify existing stormwater ponds and the location of all stormwater outfalls;

F. a table summarizing available information on the 100-year flood levels and peak discharges of existing and proposed stormwater ponds and flood profile information that corresponds to the peak discharges of channelized flow passing through the watershed. The plan shall determine the need for additional data and recommend a schedule for the data. A discussion must also be provided relative to the consistency of the flood profile information developed as part of the stormwater management plan to that of any information published in a Federal Emergency Management Agency flood insurance study;

G. a general discussion of, or a map showing areas of, known flooding problems not identified as flood-prone in a published flood insurance study;

H. a listing of the existing flood insurance studies and a location of where they can be viewed;

I. a summary of water quality data and any related information, if available, from the Pollution Control Agency, the Department of Natural Resources, the Department of Transportation, the Department of Health, the Metropolitan Council, the Metropolitan Waste Control Commission, the water management organization, the soil and water conservation district, and the affected counties and cities;

J. a map or list, if available, showing the location of known existing and abandoned surface water quality and quantity monitoring sites;

K. a list of municipalities with approved shoreland ordinances and projected completion dates for those without ordinances; and

L. a table listing the amounts and locations of all surface water appropriations as permitted by the Department of Natural Resources and provided to the organization.

Subp. 5. **Groundwater resource data.** Necessary groundwater data includes any data required to be included in the organization plan by a county groundwater plan. If a county groundwater plan is not anticipated to be completed, the organization plan must include groundwater data as necessary to allow groundwater issues to be addressed.

Subp. 6. **Soil data.** Each organization plan must include a general discussion of the types of soil present, their development

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limitations, their infiltration characteristics, and their tendency to erode. The discussion must include a list of references where more detailed data are available.

Subp. 7. **Land use and public utility services.** Necessary land use and public utility services information is limited to information that existed at the time the plan or plan amendment was developed, including:

A. a general map of existing land uses;

B. a general map showing anticipated land uses; and

C. reference to the location of the metropolitan urban service area.

Subp. 8. **Water-based recreation areas and land ownership.** Necessary information on water-based recreation areas and land ownership includes a map or a discussion of the location of all existing and proposed local, regional, state, and federal parks, preserves, wildlife areas, recreation areas, canoe routes, and water accesses available for use by the public.

Subp. 9. **Fish and wildlife habitat.** Necessary information on fish and wildlife habitat includes:

A. a list and description of the Department of Natural Resources ecological and management classifications for lakes and streams, where available;

B. a list and description of the conclusions and recommendations of biological surveys or reconnaissance studies, where available; and

C. a description of state management plans for fish and wildlife areas, where available.

Subp. 10. **Unique features and scenic areas.** Necessary unique feature and scenic area information includes a map or a description or listing of unique features and scenic areas with relationships to water including state designated natural and scientific areas; areas containing county, state, and federal rare and endangered species; and other features such as waterfalls, springs, historic mills, and heritage elements identified by the Department of Natural Resources heritage program, to the extent it is available from the department.

Subp. 11. **Pollutant sources.** Necessary information on pollutant sources includes a map or list from appropriate agencies of:

A. known closed and open sanitary landfills, closed and operating open dumps, and hazardous waste sites identified under *Minnesota Statutes*, chapter 115A or 115B, and a summary of available water quality information relating to these sites; and

B. feedlots, abandoned wells as defined by the Department of Health, registered underground and aboveground storage tank sites, permitted wastewater discharges, and a summary of available water quality information relating to these sites.

If the information in this subpart is included in a county groundwater plan, the information can be excluded from the organization plan if suitable references are provided.

8410.0070 IMPACT ON OTHER UNITS OF GOVERNMENT.

During the development of its plan or plan amendments, each watershed management organization shall request a summary of the relevant water management policies and goals of each local, regional, and state review authority identified in *Minnesota Statutes*, section 103B.231, subdivisions 7, 8, and 9. The organization shall take into consideration the goals and policies of the review authorities when drafting the organization's goals and policies. The organization's plan shall clearly outline and justify anticipated inconsistencies between its goals and policies and those of the authorities who responded if the requested information is furnished within 45 days of the organization's request.

8410.0080 ESTABLISHMENT OF GOALS AND POLICIES.

Subpart 1. **Plan contents.** Each plan must contain specific goal statements and corresponding policies relating to the overall purposes specified in *Minnesota Statutes*, section 103B.201. The goals and policies of the watershed management organization shall attempt to avoid conflict with county, regional, or state goals and policies. The goals must be outlined in sufficient detail to provide direction regarding what the policies should accomplish, provide direction to the organization's board, and allow for the success or failure of the goals and policies to be quantified. The goals and policies should recognize the fundamental relationship between water quality and land use. Development of goals and policies must, at a minimum, address the issues in subparts 2 to 9.

Subp. 2. **Water quantity.** Each plan must outline goals and policies describing how stormwater runoff will be managed. The maximum allowable peak runoff must be established for appropriate subwatersheds to the extent necessary to assure that the goals and policies of the organization will be met and address how runoff from developments creating more than one acre of new impervious surface will be managed with respect to *Minnesota Statutes*, section 103B.3365. The plan must describe the criteria used for defining "appropriate subwatersheds."

Subp. 3. **Water quality.** Each plan must outline specific water quality goals and policies for natural surface water storage and retention systems within the organization. Goals should be related to parameters or quantities that can be measured. The relationship of land use to water quality should be considered when developing goals and policies. The goals and policies should be developed to

strive for compliance with applicable water quality standards and be suitable for the intended uses of natural surface water storage and retention systems.

Subp. 4. **Recreation and fish and wildlife.** Each plan must outline how water resource based recreational activities and wildlife interests will be protected or improved through the implementation of the plan. In consideration of these issues, the plan must determine whether there is a need to classify or prioritize individual water resources for management purposes.

Subp. 5. **Enhancement of public participation; information and education.** Each plan must outline goals and policies describing who will participate and when public participation will be encouraged. Goals and policies must at least address the creation and purposes of advisory committees and public information programs.

Subp. 6. **Public ditch systems.** If public ditch systems constructed under *Minnesota Statutes*, chapter 103D or 103E, are within the organization, the plan shall by policy define the organization's relationship to the ditch authority and recommend whether or not there are advantages to managing the ditch systems under the Metropolitan Water Management Act and determine whether ditch maintenance activities have the potential of adversely impacting any goal of the organization.

Subp. 7. **Groundwater.** If a county groundwater plan has not commenced at the time the plan or plan amendment is initiated, the organization shall assess the need and degree of involvement the organization has in groundwater management and establish appropriate goals and policies.

Subp. 8. **Wetlands.** Each plan must outline specific goals and policies regarding the management of wetlands within the organization and identify high priority areas for wetland preservation, restoration, and establishment. Wetland management goals and policies should address utilization, protection and preservation, and the enhancement or restoration of wetlands identified in the organization. Each plan must also evaluate the need to establish a wetland banking system.

Subp. 9. **Erosion.** Each plan must identify specific goals and policies that will control soil erosion consistent with the goals and policies outlined in this part.

8410.0090 ASSESSMENT OF PROBLEMS.

Each plan must contain an assessment of existing and potential water resource related problems using a combination of analysis of land and water resource data collected under part 8410.0060 and through the identification of existing or potential problems by residents or local, regional, or state agencies. During the development of the assessment, the watershed management organization shall request a brief assessment of existing problems affecting the organization from the plan review authorities, the Department of Transportation, and the Department of Agriculture based on data, plans, and other documentation in their possession. The organization should solicit comments from residents and local officials in the watershed district for information about problems that may be primarily local in nature. The organization's assessment shall include a discussion of the relationship of locally identified problems to problems identified by the plan review authorities, provided the information is received within 45 days of the organization's written request. The assessment of existing and potential problems as determined by the organization must, at a minimum, include the following topic areas:

A. specific lakes and streams with water quality problems;

B. flooding and stormwater rate control issues within and between communities;

C. impacts of water quality and quantity management practices on recreation opportunities;

D. impacts of stormwater discharges on water quality and fish and wildlife resources;

E. impact of soil erosion on water quality and quantity;

F. general impact of land use practices and, in particular, land development and wetland alteration on water quality and water quantity;

G. the adequacy of existing regulatory controls to manage or mitigate adverse impacts on public waters and wetlands;

H. the adequacy of programs to:

(1) limit soil erosion and water quality degradation;

(2) maintain the tangible and intrinsic values of natural storage and retention systems; and

(3) maintain water level control structures;

I. the adequacy of capital improvement programs to correct problems relating to:

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(1) water quality;

(2) water quantity management;

(3) fish and wildlife habitat and public waters and wetland management; and

(4) recreational opportunities; and

J. future potential problems that are anticipated to occur generally within a 20-year period based on growth projections and planned urbanization identified in local and regional comprehensive plans. The assessments must include a discussion of the relationship between locally identified problems and the problems and goals identified in county, regional, state, and federal plans that are brought to the attention of the organization.

8410.0100 IMPLEMENTATION PROGRAM.

Subpart. 1. **Plan contents.** Each plan must describe an implementation program consisting of nonstructural, structural, and programmatic solutions to the problems, issues, and goals identified under parts 8410.0080 and 8410.0090. In developing its implementation program, the requirements in subparts 2 to 7 must be followed. Each plan should clearly define the responsibility of the watershed management organization and the local units of government in carrying out the implementation program and further define the organization's role when a local unit of government is considering a variance or fails to implement its water resource management responsibilities.

Subp. 2. **Regulatory controls.** In establishing required regulatory controls, items A to E must be considered.

A. Each plan must provide for the regulation of activities in wetlands and specify respective duties of the organization and local units of government. Each plan must describe local controls and procedures regarding carrying out the local government responsibilities under the Wetland Conservation Act of 1991, Laws 1991, chapter 354, and any rules adopted under it. Each plan must also define any other controls the organization has determined to be necessary to achieve its water management goals that may be more restrictive than those required by the Wetland Conservation Act of 1991, Laws 1991, chapter 354. The description must consider, where applicable, the following topics:

(1) the relationship of the organization, state agencies, local soil and water conservation districts, and affected counties, cities, and towns with respect to authority, administration, and coordination;

(2) designated repositories for required maps or inventories of wetlands;

(3) procedures related to enforcement;

(4) a description of local wetland banking programs and their relationship to a corresponding state program; and

(5) the methods and procedures to be used in determining replacement of wetland values in mitigation proposals.

B. The organization shall specify controls or programs to reduce erosion and sedimentation to receiving waters. In rural areas, agricultural crop land erosion may be controlled by implementing zoning ordinances consistent with part 6120.3300, subpart 7, and may include other water resources outside of designated shoreland areas as considered appropriate by the organization. Organizations affected by specific state laws requiring adoption of uniform countywide erosion and sediment control standards or programs must comply with those laws. Any other organization must either adopt by reference an existing set of erosion and sediment control guidelines or best management practices published by a county, a soil and water conservation district, the board, or the Pollution Control Agency, or establish comparable erosion and sedimentation guidelines of its own for the purpose of administering erosion controls.

C. Each plan must specify controls that require all appropriate building permits, driveway permits, and grading permits to contain enforceable provisions to protect soil from erosion during and after construction, including sites for which approved erosion control plans are in place.

D. Each plan must identify member local units of government that have failed to adopt and administer a Department of Natural Resources approved shoreland and floodplain ordinance where mandated by state law. If the plan notes that flood damage has occurred outside of mapped floodplains or a potential for flooding exists adjacent to stormwater facilities, the plan shall require the local unit of government to determine if additional local controls are necessary to address the situation.

E. If a plan notes the existence of certain land uses that could adversely affect the organization's ability to achieve its water quality goals, and these uses cannot be properly managed or regulated with existing controls, the uses constitute a public nuisance according to *Minnesota Statutes*, section 609.74. In those cases, the plan must provide for the adoption of local controls to define and abate the nuisances. For the purpose of this chapter, public nuisances may include any action, failure to act, or land use practice that would impair water quality if allowed to continue.

Subp. 3. **Stormwater and drainage design performance standards.** Each plan must contain minimum standards and provide for appropriate controls for the design of new stormwater conveyance, ponding, and treatment systems consistent with the overall goals

of the organization plan and consistent with *Minnesota Statutes*, section 103B.3365, subdivision 4. Included will be performance standards that provide for:

A. the establishment of target in-lake nutrient concentrations and corresponding pollutant loadings for sediment and nutrients;

B. the establishment of maximum permissible runoff rates for selected design storms based on considerations such as existing and future flood levels and expected increases in runoff volume with respect to impacts on downstream channels and adjacent development;

C. the establishment of standards to reduce the impacts of flooding on natural resources and personal and real property;

D. the establishment of design criteria for stormwater outlet structures to address floatable pollutants and to provide for access for maintenance and repair;

E. pond design methodology for nutrient entrapment consistent with the subwatershed goals; and

F. compliance with pollutant loading for specific subwatersheds consistent with local, regional, and statewide plans in consideration of Pollution Control Agency water quality standards.

Subp. 4. **Information program.** Each plan must provide for the publishing of at least one written communication per year identifying the representatives on the organization's board, current advisory committee members, how to contract the organization, its role in local water management, the goals and policies of the organization, when public meetings are held, how the organization is financed, where the plan can be viewed, and other information relative to the implementation of the plan. The communication may be accomplished through the publication of a newsletter, publication of all or a portion of an annual report, an article or news release submitted to a local newspaper widely distributed in the member communities, an attachment to a sewer or water bill, or other similar media format that annually reaches the general population.

Subp. 5. **Data collection programs.**

A. Each plan must establish water quality and quantity monitoring programs that are capable of producing accurate data to the extent necessary to determine whether the water quality and quantity goals of the organization are being achieved. The programs shall, at a minimum, include the location of sampling, the frequency of sampling, the proposed parameters to be measured, and the requirement of periodic analysis of the data.

B. Each plan should encourage all units of government collecting water quality and quantity management data to annually submit the data consistent with state compatibility guidelines to the organization and other appropriate state agencies for entry into public access data bases.

Subp. 6. **Management programs.** Each organization plan must assess or require local plans to assess the need for periodic maintenance of public works, facilities, and natural conveyance systems and specify any new programs or revisions to existing programs needed to accomplish its goals and objectives. Each plan must further identify which units of government or private parties are responsible for maintenance. Each plan must, at a minimum, assess or require local plans to assess:

A. the need and frequency for sweeping of public and private streets and parking lots;

B. the need and frequency for inspecting stormwater outfalls, sumps, and ponds;

C. the adequacy of maintenance programs for stormwater facilities and water level control structures owned by both organization members and nonmembers;

D. the condition of public ditches constructed under *Minnesota Statutes*, chapter 103D or 103E, if the organization has jurisdiction over these systems;

E. the need to establish a water body management classification system to provide for water quality and quantity management based on a hierarchical basis;

F. the need to establish local spill containment clean-up plans; and

G. the need for other management programs as considered necessary.

All proposed management programs establishing a classification system for the management of water bodies shall be consistent with chapter 7050. If organization classifications are inconsistent, the organization shall petition the Pollution Control Agency to revise the classifications in chapter 7050.

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Subp. 7. **Potential structural solutions to problems.**

A. Each plan that documents existing water management problems that cannot be resolved by preventative actions shall investigate the feasibility of implementing structural solutions that would remediate or resolve each problem.

B. For each structural solution proposed, each plan shall provide a cost estimate and a recommendation as to how it should be funded.

C. Each potential structural solution identified under this part shall be assigned priorities. In assigning priorities, consideration shall be given to regional and state plans in conjunction with the organization's goals, policies, and problems identified in parts 8410.0080 and 8410.0090.

8410.0110 IMPACT ON LOCAL GOVERNMENT.

Subpart 1. **Existing local controls.** Each plan shall review the impact of local controls and programs required by the plans according to part 8410.0100. This review shall include concerns expressed by counties, cities, and townships with respect to their administrative and financial capabilities to adopt and enforce the controls and programs in addition to a table that generally describes the status of local controls and programs of affected counties, cities, and townships with respect to that required by the plan.

Subp. 2. **Financial impact on local government.** Each plan shall contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under part 8410.0100. The analysis shall include, at a minimum, an estimate of the costs associated with the plan's implementation and anticipated sources of revenue.

Subp. 3. **Adoption by reference.** All or part of a watershed management organization plan may be adopted by reference by a local unit of government for all or part of its local plan to the degree specified in the approved organization plan.

8410.0120 IMPLEMENTATION PRIORITIES.

Each plan must prioritize the plan implementation components to make the best use of available local funding; to prevent future water management problems from occurring to the maximum extent practical; and to ensure that regional, county, state, and federal grant funding is targeted properly.

8410.0130 IMPLEMENTATION COMPONENTS.

Subpart 1. **Controls.** Each organization plan must provide for the adoption of necessary regulatory controls, stormwater design standards, education programs, data collection programs, and maintenance programs that the plan identifies under part 8410.0100.

Subp. 2. **Responsibilities.** Each organization plan must clearly distinguish the responsibilities of the watershed management organization versus the responsibilities of affected counties, cities, and townships with respect to each implementation program element established according to part 8410.0100.

Subp. 3. **Schedule.** Each organization plan must include a schedule for implementation by the organization, joint powers agreement members, and affected local units of government. All plan controls and programs to be implemented by the organization must be in effect within one year of plan adoption. All local plan controls and programs must be developed and in effect within two years of adoption of the last organization plan in the local unit of government.

Subp. 4. **Capital improvement program.** Each organization plan shall include a capital improvement program that identifies specific capital improvements necessary to implement the water resource management goals and policies of the organization.

Subp. 5. **Enforcement.** Each organization plan must identify the procedure to be followed to enforce violations of the controls of the organization as well as those of the local unit of government.

Subp. 6. **Administration process.** Each organization plan must specify the administrative process and timelines for the submittal, review, and approval of local plans and variances by the organization.

8410.0140 PLAN CONTENTS; AMENDMENTS.

Subpart 1. **Amendment section.** Each plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishing the process by which interim amendments may be made and who may initiate the amendments.

Subp. 2. **General amendment procedure.** All amendments to a plan must adhere to the review process provided in *Minnesota Statutes*, section 103B.231, subdivision 11, except when the proposed amendments constitute minor amendments and:

A. the watershed management organization has held a public meeting to explain the amendments and published a legal notice of the meeting twice, at least seven days and 14 days before the date of the meeting;

B. the organization has sent copies of the amendments to the affected local units of government, the Metropolitan Council, and the state review agencies for review and comment; and

C. the board has either agreed that the amendments are minor or failed to act within 45 days of receipt of the amendments.

Subp. 3. **Minor amendments to capital improvements.** Amendments to an approved plan's capital improvement program may be considered to be minor plan amendments if the following conditions are met:

A. the original plan set forth the capital improvements but not to the degree needed to meet the definition of "capital improvement program" as provided in *Minnesota Statutes*, section 103B.205, subdivision 3; and

B. the affected county or counties have approved the capital improvement in its revised, more detailed form.

Subp. 4. **Form of amendments.** Unless the entire document is reprinted, all amendments adopted by the organization must be printed in the form of replacement pages for the plan, each page of which must:

A. on draft amendments being considered, show deleted text as stricken and new text as underlined;

B. be renumbered as appropriate; and

C. include the effective date of the amendment.

Subp. 5. **Distribution of amendments.** Each organization must maintain a distribution list of agencies and individuals who have received a copy of the plan and shall distribute copies of amendments within 30 days of adoption. All organizations should consider sending drafts of proposal amendments to all plan review authorities to seek their comments before establishing a hearing date or commencing the formal review process.

8410.0150 ANNUAL REPORTING REQUIREMENTS.

Subpart 1. **Requirement for annual financial, activity, and audit reports.** Within 120 days of the end of the watershed management organization's fiscal year, each organization shall submit to the board a financial report, an activity report, and an audit report for the preceding fiscal year if it has expended or accrued funds during this time. These reports may be combined into a single document. The audit report for the preceding fiscal year must be prepared by a certified public accountant or the state auditor and forwarded to the state auditor's office within 120 days of the end of the fiscal year.

Subp. 2. **Content of annual financial report.** The annual financial report must include the following information:

A. the approved budget;

B. a reporting of revenues;

C. a reporting of expenditures; and

D. a financial audit report or section that includes a balance sheet, a classification of revenues and expenditures, an analysis of changes in final balances, and any additional statements considered necessary for full financial disclosure.

Subp. 3. **Content of annual activity report.** The annual activity report must include the following information:

A. a list of the organization's board members, advisory committee members, and board member vacancies at the end of the reporting year, including the names of designated officers and members and information on how members can be contacted, and indicating the governmental organization that each board member represents for joint powers organizations and the county that each member is appointed by for watershed districts;

B. a list of organization employees and consultants, including mailing addresses and telephone numbers;

C. an assessment of the previous year's annual work plan that indicates whether the stated goals and objectives were achieved and, if they were not achieved, indicates why they could not be achieved;

D. a projected work plan for the next year indicating the desired goals and objectives;

E. a summary of the permits or variances issued or denied under ordinances or rules required by the organization or local plan and any enforcement actions initiated by either the organization or its local units of government;

F. a summary of water quality monitoring data collected by the organization or its local units of government;

G. an evaluation of the status of local plan adoption and implementation based on a review of the local unit of governments' activities by the organization during the past year;

H. a copy of the written communication required by part 8410.0100, subpart 3;

I. the organization's activities related to the biennial solicitations for interest proposals for legal, professional, or technical consultant services under *Minnesota Statutes*, section 103B.227, subdivision 5;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

J. an assessment of changes in fund balances, including a description of the costs of each program element with respect to the overall annual budget; and

K. the status of any locally adopted wetland banking program.

Subp. 4. **Procedure for state audit.** The board shall use the procedure described in items A to D to determine whether to order a state financial or performance audit of an organization.

A. Before the board will consider ordering a state audit, a written complain must be filed with the board's executive director requesting the board to order a state audit. The complaint must state as specifically as possible the grounds for requesting a state audit. Valid grounds for requesting a state audit include the mishandling or misuse of public funds or the documented failure to implement an approved plan.

B. The executive director shall determine whether there is a basis for a complaint before reporting the complaint to the board. The executive director shall ensure that the affected organization is notified of the complaint and given an opportunity to respond to the allegations before determining whether there is a basis for the complaint.

C. If the executive director determines there is a basis for the complaint, the complaint shall be reported to the board. The affected organization shall be given an opportunity to appear before the board at the time the complaint is reported to it and respond to the allegations in the complaint. The complainant shall also be given an opportunity to appear.

D. After having the complaint reported to it, and after providing an opportunity for the organization and the complainant to be heard by it, the board shall decide whether to order a state financial or performance audit of the organization.

CONTENT OF LOCAL PLANS

8410.0160 GENERAL STRUCTURE.

Each local plan must, at a minimum, meet the requirements for local plans in *Minnesota Statutes*, section 103B.235, except as provided by the watershed management organization plan under part 8410.0110, subpart 3. Each local plan must include sections containing a table of contents; purpose; water resource related agreements; executive summary; land and water resource inventory; establishment of goals and policies; relation of goals and policies to local, regional, state, and federal plans, goals, and programs; assessment of problems; corrective actions; financial considerations; implementation priorities; amendment procedures; implementation program; and an appendix. Each community should consider including its local plan as a chapter of its local comprehensive plan. Each local plan shall be adopted within two years of the board's approval of the last organization plan that affects local units of government.

8410.0170 STRUCTURE.

Subpart 1. **Purpose.** Each local plan must have a section entitled "Purpose" outlining the purposes of the water management programs required by *Minnesota Statutes*, sections 103B.205 to 103B.255.

Subp. 2. **Water resource management related agreements.** Appropriate water resource management related agreements that have been entered into by the local community must be outlined, including joint powers agreements related to water management that the local community may be party to between itself and watershed management organizations, adjoining communities, or private parties. Available information concerning these agreements in general conformance with the content of joint powers agreements for organizations as outlined in part 8410.0030 must be included.

Subp. 3. **Executive summary.** Each plan shall have a section entitled "Executive Summary" that generally summarizes the content of the local plan in a manner similar to that required for organization plans under part 8410.0050.

Subp. 4. **Land and water resource inventory.** Each local plan must contain a composite land and water resource inventory containing all relevant data from organization plans affecting it consistent with the data required by part 8410.0060.

Subp. 5. **Establishment of policies and goals.** Each local plan must state specific goals and corresponding policies related to the purpose of these plans, be consistent with the policies and goals of the organization plans within the city or township, and address the relation of the local plan to the regional, state, and federal goals and programs outlined in part 8410.0070.

Subp. 6. **Assessment of problems.** Each plan must contain a summary assessment of existing or potential water resource related problems, including those identified in organization plans that affect the community. The problem assessment must be completed for only those areas within the corporate limits of the community and meet the same content requirements as those outlined for organization plans under part 8410.0080, subparts 1 and 2.

Subp. 7. **Corrective actions.** Each local plan shall describe nonstructural, programmatic, and structural solutions to the problems identified in subpart 6. The mandatory actions for organization plans outlined in part 8410.0100, subparts 1 to 6, shall be considered except that actions must be limited to those that can be implemented at a local level. All corrective actions must be consistent with the organization plans having jurisdiction in the municipality or township.

Subp. 8. **Financial considerations.** Each local plan must contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under subpart 7. The analysis must include, at a minimum, the following items:

A. the estimated cost of adoption and enforcement of local controls and standards for the local municipality;

B. the estimated annual cost of implementation of other specified programs to each local municipality;

C. a discussion of local ability to fund adoption of and enforcement of local controls and standards, implementation of other specified programs, and capital improvements, including:

(1) levy limit constraints;

(2) effect on other city funding needs;

(3) establishment of watershed management taxing districts;

(4) creation of stormwater utilities; and

(5) monetary impact against homes or farmsteads in affected community;

D. the impact on the local municipality of local implementation of each capital improvement project component if ad valorem financing is used; and

E. a summary of grant funding that would likely be available to fund water management projects and programs.

Subp. 9. **Implementation priorities.** Each local plan must prioritize implementation components to make the best use of available local funding and prevent future water management problems from occurring to the maximum practical extent. Local plans must prioritize organization plan implementation components in line with organization priorities as outlined under part 8410.0120 only for implementation components that must be facilitated by the local municipality or township.

Subp. 10. **Implementation program.** Each local plan must outline required implementation components that apply at a local level. These components shall be consistent with the required plan components outlined for organization plans under part 8410.0130. Official local controls must be enacted within six months of adoption of the local plan.

Subp. 11. **Amendment procedures.** Each local plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishes the process by which amendments may be made. The amendment procedure shall conform with the plan amendment procedure outlined in the organization plans that affect the community. Local plan amendments must be forwarded to each organization affected by the local plan amendment for review and approval before adoption.

Subp. 12. **Submittal and review.** After consideration and before adoption, the local plan shall be submitted to all affected organizations for review according to *Minnesota Statutes*, section 103B.235. Each local unit of government must also notify affected organizations within 30 days of adoption and implementation of the plan, including the adoption of necessary official controls.

8410.0180 DETERMINATIONS OF FAILURE TO IMPLEMENT.

Subpart 1. **Applicability.** This part applies when a plan is not being implemented for a watershed either because no watershed management organization exists, because the organization has not adopted an approved plan, or because the approved plan is not being carried out.

Subp. 2. **Establishing cause.** Before the board's involvement in determinations of whether a plan is being properly implemented, the board shall first establish just cause for the determination by review of a written complaint from an aggrieved party or through conclusions arrived at by board staff under the review of an organization's annual report. A complaint or appeal made by an aggrieved party under *Minnesota Statutes*, section 103B.231, subdivision 13, must be made in writing to the executive director of the board and must summarize the issues at dispute and the efforts the party made to resolve the problem.

Subp. 3. **Board staff responsibilities.**

A. Board staff may investigate issues relating to alleged failure to implement plans primarily by response from written complaint from an aggrieved party or by review of the organization's annual report. Within 30 days of receiving a written complaint, board staff are required to initiate a preliminary investigation of the facts as they appear based on personal observation, review of all relevant documents, and discussions with involved parties. The results of this preliminary investigation shall be reviewed with the executive director, and the board's legal counsel if appropriate, before preparation of a report. The report shall ascertain whether a failure to implement exists, define the exact nature of the failure to implement, and recommend a course of action.

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B. On completion of a report regarding a complaint or review of an annual report, the staff shall send a copy of its report by certified mail to the organization members of record to set a time and place for a meeting agreeable to all parties to informally discuss the contents of the report if a conflict exists. The complainant and any other aggrieved or affected party shall also be sent a copy of the report by certified mail and shall be invited to attend any meeting held to discuss the report.

C. The affected organization shall be allowed 30 days to hold a public meeting to develop a formal course of action if the joint powers agreement requires that process. Any formal response shall be sent by certified mail to the board and any aggrieved or affected party within 15 days of the meeting.

D. The affected organization and any aggrieved or affected party may not appeal to the board's dispute resolution committee established under *Minnesota Statutes*, section 103B.101, subdivision 10, to hear and resolve disputes over plan implementation until after the meeting has been held according to item B.

E. Based on information discovered at the meeting held according to item B, or receipt of the formal response received from the organization according to item C, board staff shall report to the board at a regular meeting as to the status of the dispute. If the board needs to take further action to resolve the dispute, board staff shall recommend the appropriate course of action, consulting with the board's legal counsel as appropriate.

Subp. 4. **Board responsibilities.**

A. On receipt of the board staff's report and recommendations, the board is required to do any or all of the following:

(1) nothing further if the staff's investigation finds that the subject plan is being properly implemented, provided the board concurs;

(2) advise board staff to conduct additional fact finding it considers necessary and report back to the board accordingly;

(3) order the dispute resolution committee to convene to attempt to negotiate the matter and to advise the board further; or

(4) issue findings of fact and conclusions of its investigation advising the affected organizations, county, or counties of the documented failure to implement the subject plan and advise the appropriate unit of government of its responsibility to implement the plan under *Minnesota Statutes*, section 103B.231, subdivision 3, paragraph (b), within a prescribed period of time.

B. On issuance of its findings under subpart 3, item A, the board shall notify the appropriate counties to proceed as required by *Minnesota Statutes*, section 103B.231, subdivision 3, paragraph (b) or (c), as applicable. If a county fails to act after it is notified, the board shall notify state agencies that they may initiate their prerogatives under *Minnesota Statutes*, section 103B.231, subdivision 3, paragraph (g).

C. The board's dispute resolution committee has the following duties and responsibilities with respect to disputes relating to failure to implement a plan:

(1) convene and hear appeals from both aggrieved parties and organizations not satisfied with the findings and recommendations of the board's staff report presented at the meeting required by subpart 2; and

(2) convene at the pleasure of the board as prescribed by item A to attempt to negotiate and settle disputes over determinations relating to implementation of plans and to further advise the board.

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Waters; Metropolitan Area Local Water Management

AGENCY: Board of Water and Soil Resources

MINNESOTA RULES: Chapter 8410

INCORPORATIONS BY REFERENCE:

Part 8410.0020, subpart 12, Metropolitan Urban Service Area Map (latest edition) published by the Metropolitan Council. Available from the state law library through the Minitex interlibrary loan system.

The attached rules are approved for publication in the State Register

Paul E. Rohde
Senior Assistant Revisor

Board of Water and Soil Resources

Proposed Permanent Rules Relating to Waters; Metropolitan Area Local Water Management

Rules as Proposed (all new material)

8410.0010 SCOPE.

Subpart 1. **Application.** Upon adoption, parts 8410.0010 to 8410.0180 apply to the general administration of metropolitan watershed management activities and to amendments to existing plans made after January 1, 1995. If no plan has been submitted to the board by the effective date of parts 8410.0010 to 8410.0180, any plan thereafter submitted must be in compliance with parts 8410.0010 to 8410.0180. A watershed management organization must amend its plan consistent with parts 8410.0010 to 8410.0180 and submit amendments to the board according to its amendment schedule and amendment procedures outlined in part 8410.0140, but not later than ten years from the date of initial plan approval.

Subp. 2. **Failure to implement plans.** When the board determines that a plan is not being properly implemented under an action initiated according to part 8410.0180, and there is reason to believe that an improved plan would lead to improved water management, the board may direct the responsible authorities to develop an amended plan within a reasonable time frame. In making this determination, the board must consider items including, but not limited to:

A. when the plan was approved and adopted;

B. the status of local plan development and adoption;

C. the scope and anticipated costs to amend;

D. the availability of funds; and

E. the potential short- and long-term adverse impacts on the natural resources of the affected watershed.

8410.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in

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Minnesota Statutes, section 103B.205, apply to parts 8410.0010 to 8410.0180.

Subp. 2. **Board.** "Board" means the Minnesota Board of Water and Soil Resources created by Minnesota Statutes, section 103B.101.

Subp. 3. **Capital improvement.** "Capital improvement" means a physical improvement that is not directed toward maintenance of an in-place system during its life expectancy.

Subp. 4. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council as created by Minnesota Statutes, section 473.123.

Subp. 5. **Flooding problem.** "Flooding problem" means a flooding problem that has been identified as a problem by the watershed management organization or local unit of government.

Subp. 6. **Groundwater plan.** "Groundwater plan" means a county plan adopted under Minnesota Statutes, section 103B.255.

Subp. 7. **Local comprehensive plan.** "Local comprehensive plan" has the meaning given "comprehensive plan" in Minnesota Statutes, section 473.852, subdivision 5.

Subp. 8. **Local government unit or unit.** "Local government unit" or "unit" has the meaning given it in Minnesota Statutes, section 473.852, subdivision 7.

Subp. 9. **Metropolitan Water Management Act.** "Metropolitan water management act" has the meaning given it in Minnesota Statutes, sections 103B.201 to 103B.255.

Subp. 10. **Minor plan amendments.** "Minor plan amendments" means items such as recodification of the plan, revision of a procedure meant to streamline administration of the plan, clarification of the intent of a policy, the inclusion of additional data not requiring interpretation, or any other action that will not adversely affect a local unit of government or diminish a water management organization's ability to achieve its plan's goals or implementation program.

Subp. 11. **Minor watershed unit.** "Minor watershed unit" means each of the approximately 5,600 minor watershed units delineated on the state watershed boundaries map prepared under

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the requirements of Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).

Subp. 12. **Metropolitan Urban Service Area or area.** "Metropolitan Urban Service Area" or "area" has the meaning given on maps prepared by the Metropolitan Council. The latest version of the map identifying the area is incorporated by reference and is subject to periodic change. The latest version of the map identifying the area is available from the state law library through the Minitex interlibrary loan system. The area is the seven-county metropolitan area that the council is committed by policy to provide regional planning for sanitary sewer, highway, transit, park, and airport facilities.

Subp. 13. **Natural surface water storage and retention systems.** "Natural surface water storage and retention systems" means public waters and wetlands as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 19.

Subp. 14. **Official controls.** "Official controls" has the meaning given it in Minnesota Statutes, section 473.852.

Subp. 15. **Plan.** "Plan" means the watershed management plan prepared by a watershed management organization or county as required by Minnesota Statutes, section 103B.231, subdivision 1.

Subp. 16. **Plan review authorities.** "Plan review authorities" means the Metropolitan Council, the Department of Health, the Department of Natural Resources, the Pollution Control Agency, the Board of Water and Soil Resources, and counties, cities, towns, and soil and water conservation districts partially or wholly within the watershed management organization as defined in Minnesota Statutes, section 103B.231, subdivisions 7, 8, and 9.

Subp. 17. **Public waters.** "Public waters" means waters of the state identified as public waters under Minnesota Statutes, section 103G.005, subdivision 15.

Subp. 18. **Seven-county metropolitan area.** "Seven-county metropolitan area" means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, excluding the corporate

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boundaries of the city of New Prague.

Subp. 19. **Subwatershed unit.** "Subwatershed unit" means a hydrologic area less than the entire area under the jurisdiction of a watershed management organization.

Subp. 20. **Watershed.** "Watershed" means a drainage area with boundaries that are substantially coterminous with those of an aggregation of contiguous minor watershed units possessing similar drainage patterns and that cross the borders of two or more local government units.

Subp. 21. **Watershed district.** "Watershed district" means a district established under Minnesota Statutes, chapter 103D.

Subp. 22. **Watershed management organization or organization.** "Watershed management organization" or "organization" means: (1) a watershed district wholly within the metropolitan area; or (2) a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district that has the characteristics and the authority specified under Minnesota Statutes, section 103B.211. Counties may be watershed management organizations if a joint powers watershed management organization does not perform and the responsibility for plan preparation is deferred to the counties. Lake improvement or conservation districts are not watershed management organizations.

Subp. 23. **Wetlands.** "Wetlands" means waters of the state identified as wetlands under Minnesota Statutes, section 103G.005, subdivision 19.

Subp. 24. **Wetland banking system.** "Wetland banking system" means an accounting system established by a unit of government for the purpose of tracking and managing net losses and gains to wetland values that occur as a result of development.

8410.0030 CONTENT OF JOINT POWERS AGREEMENTS.

Subpart 1. **Requirements.** In addition to a description of any authorities adopted under the content requirements of joint powers agreements as outlined in Minnesota Statutes, section

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103B.211, subdivision 1, joint powers agreements establishing a watershed management organization must, at a minimum, contain the following items:

A. a purpose statement consistent with Minnesota Statutes, section 103B.201;

B. a complete legal description defining the boundary of the organization;

C. a requirement to adopt rules of order and procedure;

D. a process for establishing an annual budget and work plan;

E. a formula for determining each member's share of the annual operating budget;

F. a statement of how member appointees are to be compensated;

G. a procedure providing for the establishment of citizen and technical advisory committees or other means of public participation;

H. a section defining the powers and duties of the organization;

I. a section establishing the duties and terms of the officers of the organization;

J. a notification process on the location and time of meetings;

K. a section defining the voting requirements for decision making and capital improvements consistent with Minnesota Statutes, section 103B.211, subdivision 1, paragraph (c);

L. a section outlining meetings to be scheduled at least annually;

M. the process and responsibilities of the organization and its members for filling vacancies consistent with Minnesota Statutes, section 103B.227, subdivisions 1 and 2;

N. the duration of the agreement and a process for dissolution that provides for at least 90 days' notice of the intent to dissolve to the affected counties and the board; and

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O. a section defining how the membership will be represented, with the total number of representatives to be at least three.

Subp. 2. **Updating.** Joint powers agreements must be updated if necessary to be in conformance with this chapter no later than January 1, 1993, or one year after adoption of chapter 8410, whichever is later.

Subp. 3. **County membership.** A county may be a member of a joint powers agreement organization when the conditions described in Minnesota Statutes, section 103B.211, subdivision 3, are present.

8410.0040 REMOVAL OF ORGANIZATION REPRESENTATIVES.

A manager of a watershed district or a member of a joint powers board may be removed from the position by the appointing authority before term expiration for violation of a code of ethics of the watershed management organization or appointing authority or for malfeasance, nonfeasance, or misfeasance, after being provided an opportunity for hearing before the appointing authority. Managers holding the position as an elected official who are not reelected, or are serving an indefinite term at the pleasure of the appointing authority, may be removed by the appointing authority at will. A decision of the appointing authority may be appealed to the Board of Water and Soil Resources.

CONTENT OF WATERSHED MANAGEMENT ORGANIZATION PLANS

8410.0050 EXECUTIVE SUMMARY.

Each plan must have a section entitled "Executive Summary." The summary should outline the purpose of the watershed management organization; the membership of the organization's board of managers; the general boundaries of the organization; a brief history of the organization; a summary of the organization's goals, problems, and potential solutions; and the general content of required local plans.

8410.0060 LAND AND WATER RESOURCE INVENTORY.

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Subpart 1. **Required.** Each plan must contain an inventory of water resource and physical factors affecting the water resources based on existing records and publications. If data publications and maps are available at a convenient central location, they may be included by reference. The plan must include a brief summary of the data and must identify where the publication can be obtained. At a minimum, the information in subparts 2 to 11 must be included in the plan. Subparts 2 and 4, item E, may be in the local plan instead of the watershed management organization plan.

Subp. 2. **Precipitation.** Each plan must include precipitation data normally used in the seven-county metropolitan area for hydrologic and hydraulic design.

Subp. 3. **General geology and topographic data.** Each organization plan shall contain a summary describing the general topographic relief, geology, aquifers, and all known groundwater and surface water connections. The summary should reference available publications and maps where data may be available in greater detail. A map defining appropriate subwatershed units within the organization must be included.

Subp. 4. **Surface water resource data.** Necessary surface water data within the watershed includes:

A. a map of the public waters and public ditch systems established under Minnesota Statutes, chapter 103D or 103E, including the location of existing dams and control structures;

B. a copy of the National Wetlands Inventory Map produced by the United States Fish and Wildlife Service and, if considered useful by the organization, a copy of the Metropolitan Mosquito Control District Mosquito Control Wetland Inventory;

C. either an inventory of the functional values of the wetlands present, a provision for a phased project to create the inventory within a given time frame, or the adoption of a specific process to identify the functional values on a case-by-case basis for the review of individual project

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proposals, all of which must be consistent with Minnesota Statutes, section 103B.3355;

D. a table of the major hydrologic characteristics of public waters if provided by the Department of Natural Resources in a format that can be readily incorporated in a plan;

E. maps showing the areas served by each existing stormwater system that identify existing stormwater ponds and the location of all stormwater outfalls;

F. a table summarizing available information on the 100-year flood levels and peak discharges of existing and proposed stormwater ponds and flood profile information that corresponds to the peak discharges of channelized flow passing through the watershed. The plan shall determine the need for additional data and recommend a schedule for the data. A discussion must also be provided relative to the consistency of the flood profile information developed as part of the stormwater management plan to that of any information published in a Federal Emergency Management Agency flood insurance study;

G. a general discussion of, or a map showing areas of, known flooding problems not identified as flood-prone in a published flood insurance study;

H. a listing of the existing flood insurance studies and a location of where they can be viewed;

I. a summary of water quality data and any related information, if available, from the Pollution Control Agency, the Department of Natural Resources, the Department of Transportation, the Department of Health, the Metropolitan Council, the Metropolitan Waste Control Commission, the water management organization, the soil and water conservation district, and the affected counties and cities;

J. a map or list, if available, showing the location of known existing and abandoned surface water quality and quantity monitoring sites;

K. a list of municipalities with approved shoreland ordinances and projected completion dates for those without ordinances; and

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L. a table listing the amounts and locations of all surface water appropriations as permitted by the Department of Natural Resources and provided to the organization.

Subp. 5. **Groundwater resource data.** Necessary groundwater data includes any data required to be included in the organization plan by a county groundwater plan. If a county groundwater plan is not anticipated to be completed, the organization plan must include groundwater data as necessary to allow groundwater issues to be addressed.

Subp. 6. **Soil data.** Each organization plan must include a general discussion of the types of soil present, their development limitations, their infiltration characteristics, and their tendency to erode. The discussion must include a list of references where more detailed data are available.

Subp. 7. **Land use and public utility services.** Necessary land use and public utility services information is limited to information that existed at the time the plan or plan amendment was developed, including:

A. a general map of existing land uses;

B. a general map showing anticipated land uses; and

C. reference to the location of the metropolitan urban service area.

Subp. 8. **Water-based recreation areas and land ownership.** Necessary information on water-based recreation areas and land ownership includes a map or a discussion of the location of all existing and proposed local, regional, state, and federal parks, preserves, wildlife areas, recreation areas, canoe routes, and water accesses available for use by the public.

Subp. 9. **Fish and wildlife habitat.** Necessary information on fish and wildlife habitat includes:

A. a list and description of the Department of Natural Resources ecological and management classifications for lakes and streams, where available;

B. a list and description of the conclusions and recommendations of biological surveys or reconnaissance studies, where available; and

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C. a description of state management plans for fish and wildlife areas, where available.

Subp. 10. **Unique features and scenic areas.** Necessary unique feature and scenic area information includes a map or a description or listing of unique features and scenic areas with relationships to water including state designated natural and scientific areas; areas containing county, state, and federal rare and endangered species; and other features such as waterfalls, springs, historic mills, and heritage elements identified by the Department of Natural Resources heritage program, to the extent it is available from the department.

Subp. 11. **Pollutant sources.** Necessary information on pollutant sources includes a map or list from appropriate agencies of:

A. known closed and open sanitary landfills, closed and operating open dumps, and hazardous waste sites identified under Minnesota Statutes, chapter 115A or 115B, and a summary of available water quality information relating to these sites; and

B. feedlots, abandoned wells as defined by the Department of Health, registered underground and aboveground storage tank sites, permitted wastewater discharges, and a summary of available water quality information relating to these sites.

If the information in this subpart is included in a county groundwater plan, the information can be excluded from the organization plan if suitable references are provided.

8410.0070 IMPACT ON OTHER UNITS OF GOVERNMENT.

During the development of its plan or plan amendments, each watershed management organization shall request a summary of the relevant water management policies and goals of each local, regional, and state review authority identified in Minnesota Statutes, section 103B.231, subdivisions 7, 8, and 9. The organization shall take into consideration the goals and policies of the review authorities when drafting the organization's goals and policies. The organization's plan

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shall clearly outline and justify anticipated inconsistencies between its goals and policies and those of the authorities who responded if the requested information is furnished within 45 days of the organization's request.

8410.0080 ESTABLISHMENT OF GOALS AND POLICIES.

Subpart 1. **Plan contents.** Each plan must contain specific goal statements and corresponding policies relating to the overall purposes specified in Minnesota Statutes, section 103B.201. The goals and policies of the watershed management organization shall attempt to avoid conflict with county, regional, or state goals and policies. The goals must be outlined in sufficient detail to provide direction regarding what the policies should accomplish, provide direction to the organization's board, and allow for the success or failure of the goals and policies to be quantified. The goals and policies should recognize the fundamental relationship between water quality and land use. Development of goals and policies must, at a minimum, address the issues in subparts 2 to 9.

Subp. 2. **Water quantity.** Each plan must outline goals and policies describing how stormwater runoff will be managed. The maximum allowable peak runoff must be established for appropriate subwatersheds to the extent necessary to assure that the goals and policies of the organization will be met and address how runoff from developments creating more than one acre of new impervious surface will be managed with respect to Minnesota Statutes, section 103B.3365. The plan must describe the criteria used for defining "appropriate subwatersheds."

Subp. 3. **Water quality.** Each plan must outline specific water quality goals and policies for natural surface water storage and retention systems within the organization. Goals should be related to parameters or quantities that can be measured. The relationship of land use to water quality should be considered when developing goals and policies. The goals and policies should be developed to strive for compliance with applicable water quality standards and be suitable for the

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intended uses of natural surface water storage and retention systems.

Subp. 4. **Recreation and fish and wildlife.** Each plan must outline how water resource based recreational activities and wildlife interests will be protected or improved through the implementation of the plan. In consideration of these issues, the plan must determine whether there is a need to classify or prioritize individual water resources for management purposes.

Subp. 5. **Enhancement of public participation; information and education.** Each plan must outline goals and policies describing who will participate and when public participation will be encouraged. Goals and policies must at least address the creation and purposes of advisory committees and public information programs.

Subp. 6. **Public ditch systems.** If public ditch systems constructed under Minnesota Statutes, chapter 103D or 103E, are within the organization, the plan shall by policy define the organization's relationship to the ditch authority and recommend whether or not there are advantages to managing the ditch systems under the Metropolitan Water Management Act and determine whether ditch maintenance activities have the potential of adversely impacting any goal of the organization.

Subp. 7. **Groundwater.** If a county groundwater plan has not commenced at the time the plan or plan amendment is initiated, the organization shall assess the need and degree of involvement the organization has in groundwater management and establish appropriate goals and policies.

Subp. 8. **Wetlands.** Each plan must outline specific goals and policies regarding the management of wetlands within the organization and identify high priority areas for wetland preservation, restoration, and establishment. Wetland management goals and policies should address utilization, protection and preservation, and the enhancement or restoration of wetlands identified in the organization. Each plan must also evaluate the need to establish a wetland banking system.

Subp. 9. **Erosion.** Each plan must identify specific goals

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and policies that will control soil erosion consistent with the goals and policies outlined in this part.

8410.0090 ASSESSMENT OF PROBLEMS.

Each plan must contain an assessment of existing and potential water resource related problems using a combination of analysis of land and water resource data collected under part 8410.0060 and through the identification of existing or potential problems by residents or local, regional, or state agencies. During the development of the assessment, the watershed management organization shall request a brief assessment of existing problems affecting the organization from the plan review authorities, the Department of Transportation, and the Department of Agriculture based on data, plans, and other documentation in their possession. The organization should solicit comments from residents and local officials in the watershed district for information about problems that may be primarily local in nature. The organization's assessment shall include a discussion of the relationship of locally identified problems to problems identified by the plan review authorities, provided the information is received within 45 days of the organization's written request. The assessment of existing and potential problems as determined by the organization must, at a minimum, include the following topic areas:

A. specific lakes and streams with water quality problems;

B. flooding and stormwater rate control issues within and between communities;

C. impacts of water quality and quantity management practices on recreation opportunities;

D. impacts of stormwater discharges on water quality and fish and wildlife resources;

E. impact of soil erosion on water quality and quantity;

F. general impact of land use practices and, in

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particular, land development and wetland alteration on water quality and water quantity;

G. the adequacy of existing regulatory controls to manage or mitigate adverse impacts on public waters and wetlands;

H. the adequacy of programs to:

(1) limit soil erosion and water quality degradation;

(2) maintain the tangible and intrinsic values of natural storage and retention systems; and

(3) maintain water level control structures;

I. the adequacy of capital improvement programs to correct problems relating to:

(1) water quality;

(2) water quantity management;

(3) fish and wildlife habitat and public waters and wetland management; and

(4) recreational opportunities; and

J. future potential problems that are anticipated to occur generally within a 20-year period based on growth projections and planned urbanization identified in local and regional comprehensive plans. The assessments must include a discussion of the relationship between locally identified problems and the problems and goals identified in county, regional, state, and federal plans that are brought to the attention of the organization.

8410.0100 IMPLEMENTATION PROGRAM.

Subpart. 1. **Plan contents.** Each plan must describe an implementation program consisting of nonstructural, structural, and programmatic solutions to the problems, issues, and goals identified under parts 8410.0080 and 8410.0090. In developing its implementation program, the requirements in subparts 2 to 7 must be followed. Each plan should clearly define the responsibility of the watershed management organization and the local units of government in carrying out the implementation

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program and further define the organization's role when a local unit of government is considering a variance or fails to implement its water resource management responsibilities.

Subp. 2. **Regulatory controls.** In establishing required regulatory controls, items A to E must be considered.

A. Each plan must provide for the regulation of activities in wetlands and specify respective duties of the organization and local units of government. Each plan must describe local controls and procedures regarding carrying out the local government responsibilities under the Wetland Conservation Act of 1991, Laws 1991, chapter 354, and any rules adopted under it. Each plan must also define any other controls the organization has determined to be necessary to achieve its water management goals that may be more restrictive than those required by the Wetland Conservation Act of 1991, Laws 1991, chapter 354. The description must consider, where applicable, the following topics:

(1) the relationship of the organization, state agencies, local soil and water conservation districts, and affected counties, cities, and towns with respect to authority, administration, and coordination;

(2) designated repositories for required maps or inventories of wetlands;

(3) procedures related to enforcement;

(4) a description of local wetland banking programs and their relationship to a corresponding state program; and

(5) the methods and procedures to be used in determining replacement of wetland values in mitigation proposals.

B. The organization shall specify controls or programs to reduce erosion and sedimentation to receiving waters. In rural areas, agricultural crop land erosion may be controlled by implementing zoning ordinances consistent with part 6120.3300, subpart 7, and may include other water resources outside of designated shoreland areas as considered appropriate

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by the organization. Organizations affected by specific state laws requiring adoption of uniform countywide erosion and sediment control standards or programs must comply with those laws. Any other organization must either adopt by reference an existing set of erosion and sediment control guidelines or best management practices published by a county, a soil and water conservation district, the board, or the Pollution Control Agency, or establish comparable erosion and sedimentation guidelines of its own for the purpose of administering erosion controls.

C. Each plan must specify controls that require all appropriate building permits, driveway permits, and grading permits to contain enforceable provisions to protect soil from erosion during and after construction, including sites for which approved erosion control plans are in place.

D. Each plan must identify member local units of government that have failed to adopt and administer a Department of Natural Resources approved shoreland and floodplain ordinance where mandated by state law. If the plan notes that flood damage has occurred outside of mapped floodplains or a potential for flooding exists adjacent to stormwater facilities, the plan shall require the local unit of government to determine if additional local controls are necessary to address the situation.

E. If a plan notes the existence of certain land uses that could adversely affect the organization's ability to achieve its water quality goals, and these uses cannot be properly managed or regulated with existing controls, the uses constitute a public nuisance according to Minnesota Statutes, section 609.74. In those cases, the plan must provide for the adoption of local controls to define and abate the nuisances. For the purpose of this chapter, public nuisances may include any action, failure to act, or land use practice that would impair water quality if allowed to continue.

Subp. 3. **Stormwater and drainage design performance standards.** Each plan must contain minimum standards and provide for appropriate controls for the design of new stormwater

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conveyance, ponding, and treatment systems consistent with the overall goals of the organization plan and consistent with Minnesota Statutes, section 103B.3365, subdivision 4. Included will be performance standards that provide for:

A. the establishment of target in-lake nutrient concentrations and corresponding pollutant loadings for sediment and nutrients;

B. the establishment of maximum permissible runoff rates for selected design storms based on considerations such as existing and future flood levels and expected increases in runoff volume with respect to impacts on downstream channels and adjacent development;

C. the establishment of standards to reduce the impacts of flooding on natural resources and personal and real property;

D. the establishment of design criteria for stormwater outlet structures to address floatable pollutants and to provide for access for maintenance and repair;

E. pond design methodology for nutrient entrapment consistent with the subwatershed goals; and

F. compliance with pollutant loading for specific subwatersheds consistent with local, regional, and statewide plans in consideration of Pollution Control Agency water quality standards.

Subp. 4. **Information program.** Each plan must provide for the publishing of at least one written communication per year identifying the representatives on the organization's board, current advisory committee members, how to contract the organization, its role in local water management, the goals and policies of the organization, when public meetings are held, how the organization is financed, where the plan can be viewed, and other information relative to the implementation of the plan. The communication may be accomplished through the publication of a newsletter, publication of all or a portion of an annual report, an article or news release submitted to a local newspaper widely distributed in the member communities, an

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attachment to a sewer or water bill, or other similar media format that annually reaches the general population.

Subp. 5. **Data collection programs.**

A. Each plan must establish water quality and quantity monitoring programs that are capable of producing accurate data to the extent necessary to determine whether the water quality and quantity goals of the organization are being achieved. The programs shall, at a minimum, include the location of sampling, the frequency of sampling, the proposed parameters to be measured, and the requirement of periodic analysis of the data.

B. Each plan should encourage all units of government collecting water quality and quantity management data to annually submit the data consistent with state compatibility guidelines to the organization and other appropriate state agencies for entry into public access data bases.

Subp. 6. **Management programs.** Each organization plan must assess or require local plans to assess the need for periodic maintenance of public works, facilities, and natural conveyance systems and specify any new programs or revisions to existing programs needed to accomplish its goals and objectives. Each plan must further identify which units of government or private parties are responsible for maintenance. Each plan must, at a minimum, assess or require local plans to assess:

A. the need and frequency for sweeping of public and private streets and parking lots;

B. the need and frequency for inspecting stormwater outfalls, sumps, and ponds;

C. the adequacy of maintenance programs for stormwater facilities and water level control structures owned by both organization members and nonmembers;

D. the condition of public ditches constructed under Minnesota Statutes, chapter 103D or 103E, if the organization has jurisdiction over these systems;

E. the need to establish a water body management classification system to provide for water quality and quantity

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management based on a hierarchical basis;

F. the need to establish local spill containment clean-up plans; and

G. the need for other management programs as considered necessary.

All proposed management programs establishing a classification system for the management of water bodies shall be consistent with chapter 7050. If organization classifications are inconsistent, the organization shall petition the Pollution Control Agency to revise the classifications in chapter 7050.

Subp. 7. **Potential structural solutions to problems.**

A. Each plan that documents existing water management problems that cannot be resolved by preventative actions shall investigate the feasibility of implementing structural solutions that would remediate or resolve each problem.

B. For each structural solution proposed, each plan shall provide a cost estimate and a recommendation as to how it should be funded.

C. Each potential structural solution identified under this part shall be assigned priorities. In assigning priorities, consideration shall be given to regional and state plans in conjunction with the organization's goals, policies, and problems identified in parts 8410.0080 and 8410.0090.

8410.0110 IMPACT ON LOCAL GOVERNMENT.

Subpart 1. **Existing local controls.** Each plan shall review the impact of local controls and programs required by the plans according to part 8410.0100. This review shall include concerns expressed by counties, cities, and townships with respect to their administrative and financial capabilities to adopt and enforce the controls and programs in addition to a table that generally describes the status of local controls and programs of affected counties, cities, and townships with respect to that required by the plan.

Subp. 2. **Financial impact on local government.** Each plan

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shall contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under part 8410.0100. The analysis shall include, at a minimum, an estimate of the costs associated with the plan's implementation and anticipated sources of revenue.

Subp. 3. **Adoption by reference.** All or part of a watershed management organization plan may be adopted by reference by a local unit of government for all or part of its local plan to the degree specified in the approved organization plan.

8410.0120 IMPLEMENTATION PRIORITIES.

Each plan must prioritize the plan implementation components to make the best use of available local funding; to prevent future water management problems from occurring to the maximum extent practical; and to ensure that regional, county, state, and federal grant funding is targeted properly.

8410.0130 IMPLEMENTATION COMPONENTS.

Subpart 1. **Controls.** Each organization plan must provide for the adoption of necessary regulatory controls, stormwater design standards, education programs, data collection programs, and maintenance programs that the plan identifies under part 8410.0100.

Subp. 2. **Responsibilities.** Each organization plan must clearly distinguish the responsibilities of the watershed management organization versus the responsibilities of affected counties, cities, and townships with respect to each implementation program element established according to part 8410.0100.

Subp. 3. **Schedule.** Each organization plan must include a schedule for implementation by the organization, joint powers agreement members, and affected local units of government. All plan controls and programs to be implemented by the organization must be in effect within one year of plan adoption. All local plan controls and programs must be developed and in effect within two years of adoption of the last organization plan in

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the local unit of government.

Subp. 4. **Capital improvement program.** Each organization plan shall include a capital improvement program that identifies specific capital improvements necessary to implement the water resource management goals and policies of the organization.

Subp. 5. **Enforcement.** Each organization plan must identify the procedure to be followed to enforce violations of the controls of the organization as well as those of the local unit of government.

Subp. 6. **Administration process.** Each organization plan must specify the administrative process and timelines for the submittal, review, and approval of local plans and variances by the organization.

8410.0140 PLAN CONTENTS; AMENDMENTS.

Subpart 1. **Amendment section.** Each plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishing the process by which interim amendments may be made and who may initiate the amendments.

Subp. 2. **General amendment procedure.** All amendments to a plan must adhere to the review process provided in Minnesota Statutes, section 103B.231, subdivision 11, except when the proposed amendments constitute minor amendments and:

A. the watershed management organization has held a public meeting to explain the amendments and published a legal notice of the meeting twice, at least seven days and 14 days before the date of the meeting;

B. the organization has sent copies of the amendments to the affected local units of government, the Metropolitan Council, and the state review agencies for review and comment; and

C. the board has either agreed that the amendments are minor or failed to act within 45 days of receipt of the amendments.

Subp. 3. **Minor amendments to capital improvements.** Amendments to an approved plan's capital improvement program may

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be considered to be minor plan amendments if the following conditions are met:

A. the original plan set forth the capital improvements but not to the degree needed to meet the definition of "capital improvement program" as provided in Minnesota Statutes, section 103B.205, subdivision 3; and

B. the affected county or counties have approved the capital improvement in its revised, more detailed form.

Subp. 4. **Form of amendments.** Unless the entire document is reprinted, all amendments adopted by the organization must be printed in the form of replacement pages for the plan, each page of which must:

A. on draft amendments being considered, show deleted text as stricken and new text as underlined;

B. be renumbered as appropriate; and

C. include the effective date of the amendment.

Subp. 5. **Distribution of amendments.** Each organization must maintain a distribution list of agencies and individuals who have received a copy of the plan and shall distribute copies of amendments within 30 days of adoption. All organizations should consider sending drafts of proposal amendments to all plan review authorities to seek their comments before establishing a hearing date or commencing the formal review process.

8410.0150 ANNUAL REPORTING REQUIREMENTS.

Subpart 1. **Requirement for annual financial, activity, and audit reports.** Within 120 days of the end of the watershed management organization's fiscal year, each organization shall submit to the board a financial report, an activity report, and an audit report for the preceding fiscal year if it has expended or accrued funds during this time. These reports may be combined into a single document. The audit report for the preceding fiscal year must be prepared by a certified public accountant or the state auditor and forwarded to the state auditor's office within 120 days of the end of the fiscal year.

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Subp. 2. **Content of annual financial report.** The annual financial report must include the following information:

A. the approved budget;

B. a reporting of revenues;

C. a reporting of expenditures; and

D. a financial audit report or section that includes a balance sheet, a classification of revenues and expenditures, an analysis of changes in final balances, and any additional statements considered necessary for full financial disclosure.

Subp. 3. **Content of annual activity report.** The annual activity report must include the following information:

A. a list of the organization's board members, advisory committee members, and board member vacancies at the end of the reporting year, including the names of designated officers and members and information on how members can be contacted, and indicating the governmental organization that each board member represents for joint powers organizations and the county that each member is appointed by for watershed districts;

B. a list of organization employees and consultants, including mailing addresses and telephone numbers;

C. an assessment of the previous year's annual work plan that indicates whether the stated goals and objectives were achieved and, if they were not achieved, indicates why they could not be achieved;

D. a projected work plan for the next year indicating the desired goals and objectives;

E. a summary of the permits or variances issued or denied under ordinances or rules required by the organization or local plan and any enforcement actions initiated by either the organization or its local units of government;

F. a summary of water quality monitoring data collected by the organization or its local units of government;

G. an evaluation of the status of local plan adoption and implementation based on a review of the local unit of governments' activities by the organization during the past

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year;

H. a copy of the written communication required by part 8410.0100, subpart 3;

I. the organization's activities related to the biennial solicitations for interest proposals for legal, professional, or technical consultant services under Minnesota Statutes, section 103B.227, subdivision 5;

J. an assessment of changes in fund balances, including a description of the costs of each program element with respect to the overall annual budget; and

K. the status of any locally adopted wetland banking program.

Subp. 4. **Procedure for state audit.** The board shall use the procedure described in items A to D to determine whether to order a state financial or performance audit of an organization.

A. Before the board will consider ordering a state audit, a written complain must be filed with the board's executive director requesting the board to order a state audit. The complaint must state as specifically as possible the grounds for requesting a state audit. Valid grounds for requesting a state audit include the mishandling or misuse of public funds or the documented failure to implement an approved plan.

B. The executive director shall determine whether there is a basis for a complaint before reporting the complaint to the board. The executive director shall ensure that the affected organization is notified of the complaint and given an opportunity to respond to the allegations before determining whether there is a basis for the complaint.

C. If the executive director determines there is a basis for the complaint, the complaint shall be reported to the board. The affected organization shall be given an opportunity to appear before the board at the time the complaint is reported to it and respond to the allegations in the complaint. The complainant shall also be given an opportunity to appear.

D. After having the complaint reported to it, and after providing an opportunity for the organization and the

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complainant to be heard by it, the board shall decide whether to order a state financial or performance audit of the organization.

CONTENT OF LOCAL PLANS

8410.0160 GENERAL STRUCTURE.

Each local plan must, at a minimum, meet the requirements for local plans in Minnesota Statutes, section 103B.235, except as provided by the watershed management organization plan under part 8410.0110, subpart 3. Each local plan must include sections containing a table of contents; purpose; water resource related agreements; executive summary; land and water resource inventory; establishment of goals and policies; relation of goals and policies to local, regional, state, and federal plans, goals, and programs; assessment of problems; corrective actions; financial considerations; implementation priorities; amendment procedures; implementation program; and an appendix. Each community should consider including its local plan as a chapter of its local comprehensive plan. Each local plan shall be adopted within two years of the board's approval of the last organization plan that affects local units of government.

8410.0170 STRUCTURE.

Subpart 1. **Purpose.** Each local plan must have a section entitled "Purpose" outlining the purposes of the water management programs required by Minnesota Statutes, sections 103B.205 to 103B.255.

Subp. 2. **Water resource management related agreements.** Appropriate water resource management related agreements that have been entered into by the local community must be outlined, including joint powers agreements related to water management that the local community may be party to between itself and watershed management organizations, adjoining communities, or private parties. Available information concerning these agreements in general conformance with the content of joint powers agreements for organizations as outlined in part 8410.0030 must be included.

Subp. 3. **Executive summary.** Each plan shall have a

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section entitled "Executive Summary" that generally summarizes the content of the local plan in a manner similar to that required for organization plans under part 8410.0050.

Subp. 4. **Land and water resource inventory.** Each local plan must contain a composite land and water resource inventory containing all relevant data from organization plans affecting it consistent with the data required by part 8410.0060.

Subp. 5. **Establishment of policies and goals.** Each local plan must state specific goals and corresponding policies related to the purpose of these plans, be consistent with the policies and goals of the organization plans within the city or township, and address the relation of the local plan to the regional, state, and federal goals and programs outlined in part 8410.0070.

Subp. 6. **Assessment of problems.** Each plan must contain a summary assessment of existing or potential water resource related problems, including those identified in organization plans that affect the community. The problem assessment must be completed for only those areas within the corporate limits of the community and meet the same content requirements as those outlined for organization plans under part 8410.0080, subparts 1 and 2.

Subp. 7. **Corrective actions.** Each local plan shall describe nonstructural, programmatic, and structural solutions to the problems identified in subpart 6. The mandatory actions for organization plans outlined in part 8410.0100, subparts 1 to 6, shall be considered except that actions must be limited to those that can be implemented at a local level. All corrective actions must be consistent with the organization plans having jurisdiction in the municipality or township.

Subp. 8. **Financial considerations.** Each local plan must contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under subpart 7. The analysis must include, at a minimum, the following items:

A. the estimated cost of adoption and enforcement of

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local controls and standards for the local municipality;

B. the estimated annual cost of implementation of other specified programs to each local municipality;

C. a discussion of local ability to fund adoption of and enforcement of local controls and standards, implementation of other specified programs, and capital improvements, including:

(1) levy limit constraints;

(2) effect on other city funding needs;

(3) establishment of watershed management taxing districts;

(4) creation of stormwater utilities; and

(5) monetary impact against homes or farmsteads in affected community;

D. the impact on the local municipality of local implementation of each capital improvement project component if ad valorem financing is used; and

E. a summary of grant funding that would likely be available to fund water management projects and programs.

Subp. 9. **Implementation priorities.** Each local plan must prioritize implementation components to make the best use of available local funding and prevent future water management problems from occurring to the maximum practical extent. Local plans must prioritize organization plan implementation components in line with organization priorities as outlined under part 8410.0120 only for implementation components that must be facilitated by the local municipality or township.

Subp. 10. **Implementation program.** Each local plan must outline required implementation components that apply at a local level. These components shall be consistent with the required plan components outlined for organization plans under part 8410.0130. Official local controls must be enacted within six months of adoption of the local plan.

Subp. 11. **Amendment procedures.** Each local plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishes the process by which amendments may be made. The amendment procedure shall conform

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with the plan amendment procedure outlined in the organization plans that affect the community. Local plan amendments must be forwarded to each organization affected by the local plan amendment for review and approval before adoption.

Subp. 12. **Submittal and review.** After consideration and before adoption, the local plan shall be submitted to all affected organizations for review according to Minnesota Statutes, section 103B.235. Each local unit of government must also notify affected organizations within 30 days of adoption and implementation of the plan, including the adoption of necessary official controls.

8410.0180 DETERMINATIONS OF FAILURE TO IMPLEMENT.

Subpart 1. **Applicability.** This part applies when a plan is not being implemented for a watershed either because no watershed management organization exists, because the organization has not adopted an approved plan, or because the approved plan is not being carried out.

Subp. 2. **Establishing cause.** Before the board's involvement in determinations of whether a plan is being properly implemented, the board shall first establish just cause for the determination by review of a written complaint from an aggrieved party or through conclusions arrived at by board staff under the review of an organization's annual report. A complaint or appeal made by an aggrieved party under Minnesota Statutes, section 103B.231, subdivision 13, must be made in writing to the executive director of the board and must summarize the issues at dispute and the efforts the party made to resolve the problem.

Subp. 3. **Board staff responsibilities.**

A. Board staff may investigate issues relating to alleged failure to implement plans primarily by response from written complaint from an aggrieved party or by review of the organization's annual report. Within 30 days of receiving a written complaint, board staff are required to initiate a preliminary investigation of the facts as they appear based on

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personal observation, review of all relevant documents, and discussions with involved parties. The results of this preliminary investigation shall be reviewed with the executive director, and the board's legal counsel if appropriate, before preparation of a report. The report shall ascertain whether a failure to implement exists, define the exact nature of the failure to implement, and recommend a course of action.

B. On completion of a report regarding a complaint or review of an annual report, the staff shall send a copy of its report by certified mail to the organization members of record to set a time and place for a meeting agreeable to all parties to informally discuss the contents of the report if a conflict exists. The complainant and any other aggrieved or affected party shall also be sent a copy of the report by certified mail and shall be invited to attend any meeting held to discuss the report.

C. The affected organization shall be allowed 30 days to hold a public meeting to develop a formal course of action if the joint powers agreement requires that process. Any formal response shall be sent by certified mail to the board and any aggrieved or affected party within 15 days of the meeting.

D. The affected organization and any aggrieved or affected party may not appeal to the board's dispute resolution committee established under Minnesota Statutes, section 103B.101, subdivision 10, to hear and resolve disputes over plan implementation until after the meeting has been held according to item B.

E. Based on information discovered at the meeting held according to item B, or receipt of the formal response received from the organization according to item C, board staff shall report to the board at a regular meeting as to the status of the dispute. If the board needs to take further action to resolve the dispute, board staff shall recommend the appropriate course of action, consulting with the board's legal counsel as appropriate.

Subp. 4. **Board responsibilities.**

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A. On receipt of the board staff's report and recommendations, the board is required to do any or all of the following:

(1) nothing further if the staff's investigation finds that the subject plan is being properly implemented, provided the board concurs;

(2) advise board staff to conduct additional fact finding it considers necessary and report back to the board accordingly;

(3) order the dispute resolution committee to convene to attempt to negotiate the matter and to advise the board further; or

(4) issue findings of fact and conclusions of its investigation advising the affected organizations, county, or counties of the documented failure to implement the subject plan and advise the appropriate unit of government of its responsibility to implement the plan under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (b), within a prescribed period of time.

B. On issuance of its findings under subpart 3, item A, the board shall notify the appropriate counties to proceed as required by Minnesota Statutes, section 103B.231, subdivision 3, paragraph (b) or (c), as applicable. If a county fails to act after it is notified, the board shall notify state agencies that they may initiate their prerogatives under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (g).

C. The board's dispute resolution committee has the following duties and responsibilities with respect to disputes relating to failure to implement a plan:

(1) convene and hear appeals from both aggrieved parties and organizations not satisfied with the findings and recommendations of the board's staff report presented at the meeting required by subpart 2; and

(2) convene at the pleasure of the board as prescribed by item A to attempt to negotiate and settle disputes over determinations relating to implementation of plans and to

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further advise the board.

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Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767
Fax (612) 297-5615

June 16, 1992

To: Pattie Nolte, Special Assistant General
Attorney General's Office
525 Park St., Suite 500

From: Bruce Sandstrom
Board of Water and Soil Resources

Subject: MN Rule Chapter 8400, Metro Water Management

Bill Clapp advised me that you need four copies of the above referenced rule as approved by the Revisor's Office. Corrine Staeheli from the Revisor's Office advised me that the enclosed four copies of the rule are what you need. Also enclosed is a copy of the letter of transmittal that came with that version of the rule.

Please advise me if you need any further information. I am very interested in finding out actually when these rules will actually be adopted, legal & enforceable. I can be reached at 297-4958.

Encl

a:nolte.mem

6-17-92
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Rules

Regional Offices

Northwest Region
1106 Paul Bunyan Drive, NE
Bemidji, MN 56601
218-755-3963

Northeast Region
394 South Lake Avenue
Room 403
Duluth, MN 55802
218-723-4752

West Central Region
503 Washington Street
Brainerd, MN 56401
218-828-2604

South Central Region
Box 756
New Ulm, MN 56073
507-359-6074

Southeast Region
Friedell Bldg., Room 100
1200 S. Broadway
Rochester, MN 55904
507-285-7458

Southwest Region
Box 267
1400 E. Lyon Street
Marshall, MN 56258
507-537-6060

East Central Region
Southbridge Office Building
155 South Wabasha St., Suite 104
St. Paul, MN 55107
612-296-3767

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CERTIFICATE OF THE

RESOLUTION ADOPTING THE RULE

I, D. James Nielsen, do hereby certify that I am a member and the Chairman of the Minnesota Board of Water and Soil Resources (Board), a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board, duly and properly called and held on the 27th day of May, 1992, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to Metropolitan Area Local Water Management is approved and adopted, pursuant to authority vested in the Board by Minnesota Statutes 103B.211, Subd. 1; 103B.231, Subd. 6, 10, and 14; and 103B.237, Subd. 3 and Ronald D. Harnack, the Executive Director of the Board, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general and to perform the necessary acts to provide that the rule shall have the force and effect of law."
>
> "IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of May, 1992.

D. James Nielsen

Attest: BWSR Board Member

STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Proposed Action of the Rule of the State, Chapter 8410 Governing Metropolitan Area Local Water Management

FINDINGS OF FACT CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Board of Water and Soil Resources (BWSR) intent to adopt the above-entitled rule was published in the State Register on April 6, 1992 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.14, subdivision 1a and 14.22 on March 30, 1992 (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and was made available to the public on a request basis in the Notice published in the State Register.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the Board.

(7) No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

Based on (8) the comments and evidence in the record before the agency, I find that the Rule of the State, Chapter 8410 is needed and reasonable, and should be adopted verbatim as published in the State Register.

(9) NOW, THEREFORE, IT IS ORDERED that the rule identified as Chapter 8400 is adopted this 27th day of May, 1992, pursuant to authority vested in [the Board] by Minnesota Statutes, section 103B.101, Subd. 7.

D. James Nielsen, Chairman

Office of the Revisor of Statutes
Administrative Rules

Paul E. Rohde
Senior Assistant Revisor
296-0953

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

April 6, 1992

RECEIVED
APR 0 8 1992
BOARD OF SOIL RESOURCES

Bruce Sandstrom
Board of Water and Soil Resources
155 South Wabasha Street, Suite 104
Saint Paul, MN 55107

RE: File No. 1991

Dear Mr. Sandstrom:

Enclosed are stripped copies of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

If your emergency rules or rules adopted without public hearing are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will then input the changes, approve the document as to form, and provide you with copies to submit to the Attorney General.

If your rules are adopted after public hearing without modification, please submit one copy of this document to our office for final approval as to form. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will input the changes, approve the document as to form, and provide you with copies.

Very truly yours,

PER/cs

Paul E. Rohde