

CLEARWATER COUNTY BUFFER ORDINANCE

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Signed

BRENDA L. KNABLE

CLEARWATER COUNTY RECORDER

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December, 2017

An ordinance establishing regulations pursuant to the Buffer and Soil Loss Statutes (Laws of Minnesota 2016, Chapter 85: S.F. 2503), also known as the "Buffer Law" in Clearwater County, Minnesota, hereinafter referred to as "the County". This law establishes requirements for landowners to maintain a continuous vegetative buffer adjacent to public waters and public drainages.

1.0 STATUTORY AUTHORIZATION AND POLICY

- 1.1 **Statutory authorization.** This buffer ordinance is adopted pursuant to the authorization and policies contained in Minn. Stat. §103F.48, the Buffer Law, and the County planning and zoning enabling legislation in Minn. Stat. chapter 394.
- 1.2 **Purpose and intent.** It is the purpose and intent of Clearwater County to:
 - (a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
 - (1) Protect state water resources from erosion and runoff pollution;
 - (2) Stabilize soils, shores and banks; and
 - (3) Protect or provide riparian corridors.
 - (b) Coordinate the implementation and enforcement of the water resources riparian protection requirements of Minn. Stat. §103F.48 with the shoreland management rules and ordinances adopted under the authority of Minn. Stat. §103F.201 to 103F.227 and the management of public drainage systems established under Minn. Stat. chapter 103E where applicable; and
 - (c) Provide efficient and effective direction to landowners and protection of surface water quality and related land resources.

2.0 DEFINITIONS AND GENERAL PROVISIONS

- 2.1 **Definitions.** Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the same meaning they have in common usage and to give this ordinance it's most reasonable application. For the purpose of this ordinance, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.
 - 2.1.1 **"APO"** means the administrative penalty order issued pursuant to Minn. Stat. §103F.48, subd. 7 and Minn. Stat. §103B.101, subd. 12a.
 - 2.1.2 **"Buffer"** has the meaning provided in Minn. Stat. §103F.48, subd. 1(c).

- 2.1.3 **"Buffer protection map"** has the meaning provided in Minn. Stat. §103F.48, subd. 1(d) and which are available on the Department of Natural Resources website.
- 2.1.4 **"BWSR"** means the Board of Water and Soil Resources.
- 2.1.5 **"Cultivation farming"** means farming practices that disturb root or soil structure or that impair the viability of perennial vegetation due to cutting or harvesting near the soil surface.
- 2.1.6 **"Drainage authority"** has the meaning provided in Minn. Stat. §103E.005, subd. 9.
- 2.1.7 **"Landowner"** means the holder of the fee title, the holder's agents or assigns, any lessee, licensee, or operator of the real property and includes all land occupiers as defined by Minn. Stat. §103F.401, subd. 7 or any other party conducting farming activities on or exercising control over the real property.
- 2.1.8 **"Parcel"** means a unit of real property that has been given a tax identification number maintained by the County.
- 2.1.9 **"Public drainage system"** has the meaning given to "drainage system" in Minn. Stat. §103E.005, subd. 12.
- 2.1.10 **"Local water management authority"** has the meaning provided in Minn. Stat. §103F.48, Subd. 1(g).
- 2.1.11 **"Normal water level"** means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.
- 2.1.112 **"SWCD"** means Soil and Water Conservation District.
- 2.2 **Severability.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.
- 2.3 **Data sharing/management.**
- 2.3.1 The County may enter into arrangements with an SWCD, a watershed district if applicable, BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this ordinance.
- 2.3.2 The County will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.
- 2.4 **Clearwater County Administrative Penalty Order Plan.** The Clearwater County Administrative Penalty Order Plan for Buffer Law Implementation, dated December, 2017, is adopted by reference upon adoption of this Ordinance.

3.0 JURISDICTION

- 3.1 **Jurisdiction.** The provisions of this ordinance apply to the following waters and public drainage systems as shown on the buffer protection map:

Clearwater County Buffer Ordinance

- 3.1.1 All waters, excluding the public drainage systems for which the County is not the drainage authority under Minn. Stat. Chapter 103E, and the Watershed District is assuming jurisdiction; and
- 3.1.2 All public drainage systems for which the County is not the drainage authority under Minn. Stat. Chapter 103E where the Watershed District is not assuming jurisdiction.

4.0 BUFFER REQUIREMENTS

4.1 **Buffer width.** Except as provided in subsection 4.4 and 4.5, a landowner owning property adjacent to a water body identified on the buffer protection map must establish and maintain a buffer area as follows:

(a) For waters shown on the buffer protection map requiring a fifty (50) foot width buffer, the buffer width will be fifty (50) foot average and thirty (30) foot minimum width as provided in Minn. Stat. §103F.48, subd. 3 as measured according to subsection 4.2; and

(b) For waters shown on the buffer protection map requiring a sixteen and a half (16.5) foot minimum width buffer, the buffer width will be sixteen and a half (16.5) feet as provided in Minn. Stat. §103F.48, subd. 3 as measured according to subsection 4.2.

4.2 **Measurement.**

(a) The width of any required buffer on land adjacent to a water requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer shall be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level as provided in Minn. Stat. §103F.48, subd. 3(c).

(b) The width of any required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer shall be measured in the same manner as for measuring the vegetated grass strip under Minn. Stat. §103E.021, subd. 1 as provided in Minn. Stat. §103F.48, subd. 3(c).

4.3 **Use of buffer area.** Except as provided in sections 4.4 and 4.5 a buffer as defined in this ordinance may not be put to any use, included but not limited to cultivation farming, which would remove or prevent the permanent growth of perennial vegetation.

4.4 **Exemptions.** The requirement of section 4.1 does not apply to land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.

4.5. **Alternative practices.** As provided in Minn. Stat. §103F.48, subd. 3(b) an owner of land that is used for cultivation farming may demonstrate compliance with subsection 4.1 by establishing and maintaining an alternative riparian water quality practice(s), or combination of structural, vegetative, and management practice(s) which provide water quality protection comparable to the water quality protection provided by a required buffer as defined in sections 4.1 to 4.3. The adequacy of any alternative practice allowed under this section shall be based on:

(a) the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);

(b) common alternative practices adopted and published by BWSR;

(c) practices based on local conditions approved by the SWCD that are consistent with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or

(d) other practices adopted by BWSR.

4.6 Nonconformity. Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this ordinance, the provisions of such shall be controlling. The continuation of nonconformities provided for by Minn. Stat. §394 and §462 shall not apply to compliance with this ordinance and Minn. Stat. §103F.48.

5.0 COMPLIANCE DETERMINATIONS

5.1 Compliance determinations. Compliance with the buffer requirements set forth in section 4 will be determined by the SWCD on a parcel by parcel basis. The compliance status of each bank, or edge of a waterbody on an individual parcel will be determined independently.

5.2 Investigation and notification of noncompliance. When the County identifies a potential noncompliance with the buffer requirements or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the SWCD to determine the appropriate course of action to document compliance status. This may include communication with the landowner, inspection or other appropriate steps necessary to verify the compliance status of the parcel. On the basis of the evidence gathered in this process, the SWCD may issue a Notification of Noncompliance to the County. If the SWCD does not issue such a Notification, the County will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and subsection 6.2.

At any time during process set forth in 5.2 and 5.3, the landowner may provide documentation of compliance to the SWCD.

5.2.1 Compliance determination. The SWCD will evaluate the available documentation, and/or evaluate and/or inspect the buffer and/or alternative practices to determine if the parcel is in compliance. Upon completion of the evaluation and/or inspection the SWCD shall issue a written compliance determination to the landowner, the County and BWSR. The SWCD may also issue a Validation of Compliance if applicable and requested by the landowner.

5.3 Corrective Action Notice. On receipt of an SWCD Notification of Noncompliance, the County will issue the landowner a Corrective Action Notice that will:

(a) include a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48;

(b) provide a timeline for complying with the corrective action notice;

(c) provide a compliance standard against which the County will judge the corrective action; and

(d) include a statement that failure to respond to this Notice may result in the assessment administrative penalties.

The County may send the landowner a combined Corrective Action Notice and APO as provided in section 6.2 so long as the combined Notice/APO includes all the required elements of both.

The County shall transmit the corrective action notice by either personal service to the landowner or by

depositing the same in the U.S. Mail. If service is made by U.S. mail, the document is deemed received three business days after the notice was placed in the U.S. mail. Failure of actual receipt of a corrective action notice that has either been personally served or served by depositing the same in the U.S. Mail shall not be deemed a defense in an enforcement proceeding under section 6.0. The County shall also send a copy of the Notice to the SWCD and BWSR.

Counties may modify the corrective actions and timeline for compliance, in accordance with section 5.2, to extend the compliance timeline for a modification that imposes a substantial new action or significantly accelerates the completion date for an action.

- 5.3.1 At any time after receipt of a corrective action notice, the landowner may provide documentation of compliance to the County. In addition, the landowner may supply information to the County or the SWCD in support of a request to modify a corrective action or the timeline for compliance. On the basis of any such submittal or at its own discretion, the County may make a written modification to the Corrective Action Notice or timeline for compliance. The County should also make a written determination documenting whether the noncompliance has been fully corrected. Any such modification of a compliance determination will be served on the landowner in the manner provided for in section 5.3. The County shall provide the SWCD and BWSR a written copy of any modification made pursuant to this provision.
- 5.3.2 The SWCD may, after an evaluation of the evidence documenting compliance submitted by the landowner, issue a written Validation of Compliance if requested by the landowner. Upon receipt by the County of a written compliance determination issued by the SWCD, the Corrective Action Notice will be deemed withdrawn for the purpose of section 6.0, and the subject property will not be subject to enforcement under that section.

6.0 ENFORCEMENT

6.1 Violation. Failure to comply with a corrective action notice issued under Section 5 shall constitute a violation of this ordinance. The County may issue an APO as provided for in Minn. Stat. §§103F.48, subd. 7(b) and (c) and 103B.101, subdivision 12a to a landowner who has failed to take the corrective action set forth in the corrective action notice. For the APO to be effective it must be served on the landowner together with a copy of the corrective action notice or alternatively the County may serve the landowner with a combined Corrective Action Notice and APO so long as the combined Notice/APO includes all the elements of both. Service is effective either by personal service or by depositing the documents set forth herein in the U.S. Mail. Any penalty assessed in the APO shall continue to accrue until the violation is corrected as provided in the Corrective Action Notice and APO.

6.2 Administrative Penalty Order (APO).

(a) Initial violation. The penalty for a landowner on a single parcel that has not previously been the subject of an APO issued by the County shall be:

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

(b) Repeat violation. The penalty for a landowner on a single parcel that has previously been the subject of an APO issued by the County shall be:

- i. \$50 per parcel per day for 180 days after issuance of the Corrective Action Notice; and
- ii. \$200 per parcel per day for after 180 days following the time period in i.

(c) Ongoing penalty assessment. Any penalty assessed under this section shall continue until the corrective action notice has been satisfied.

6.2.1 APO. To be valid the APO shall include, at a minimum:

- i. The facts constituting the violation of the riparian protection and water quality practices requirements set forth in this section 4.0 of this ordinance or Minn. Stat. §103F.48 ;
- ii. The specific statute and/or ordinance section(s) that has/have been violated;
- iii. A written description of prior efforts to work with the landowner to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to accrue;
- vi. The date that payment of the penalty is due;
- vii. The date by which all or part of the penalty may be forgiven if the landowner has/have complied with the Corrective Action Notice; and
- viii. A statement of the landowner's right to appeal the APO.

6.2.2 All or part of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the APO by the landowner as provided in Minn. Stat. §103F.48, subd. 7(d).

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

6.2.4 An APO issued under this section may be appealed to the BWSR within 30 days of receipt by the landowner in accordance with the requirements set for the in Minn. Stat. §103F.48, subd. 9. Any APO that is not appealed within the 30 day period shall be deemed final.

6.3 Administrative Penalty Order Procedures

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

6.3.2 Compliance verification. Once a landowner has submitted written evidence of correction of the violation set forth in the notice of compliance, compliance must be verified. The County will:

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

The County may consult with the SWCD when conducting a compliance verification.

6.3.3 Right to appeal. Within 30 days after receipt of the APO, a landowner may appeal the terms and conditions of an APO issued by a County to BWSR as provided in Minn. Stat. §103F.48, subd. 9. The appeal must be in writing and must include a copy of the APO that is being appealed, the basis for the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or electronically, to the Executive Director of BWSR.

6.3.4 Penalty due. Unless the landowner appeals the APO as provided in section 6.3.3 the penalty specified in the APO becomes immediately due and payable to the County as set forth in the APO. If, however, the landowner submits written documentation that the violations has been corrected prior to the time the penalty becomes due and payable the County shall verify compliance and adjust the penalty to an amount the landowner would have owed had the penalty been paid on the date the landowner submitted written documentation of compliance. Written documentation of compliance may include a written validation of compliance issued by the SWCD.

However, if the County determines the violation was not fully corrected, the County shall notify the landowner by issuing a written letter of determination and depositing it in the U.S. Mail. Any determination sent by U.S. Mail shall be deemed received three business days after the letter of determination has been deposited in the U.S. Mail. The landowner shall have an additional 20 days after receipt of the letter of determination to pay the penalty or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the Corrective Action Notice and APO.

6.3.5 Referral for collection of penalty. All penalties and interest assessed under an APO must be paid by the landowner within the time specified in this section. All payments shall be made payable to the County. Any penalty or interest not received in the specified time may be collected by the County using any lawful means.

6.3.6 Reporting and documentation. The County shall maintain the following records for any potential violation of the riparian protection and water quality practices requirements. Said records shall include but are not limited to the following:

- iv. The cause of the violation;
- v. The magnitude and duration of the violation;
- vi. Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
- vii. Documentation showing whether the violation has the potential to harm to the natural resources of the state;
- viii. A record of past violations;
- ix. Efforts by the SWCD, County, Watershed District or BWSR to assist the responsible party or parties to become compliant, including written and oral communications with the responsible party or parties ; and
- x. Past and present corrective action efforts by the responsible party or parties.

7.0 EFFECTIVE DATE

This Ordinance shall be in full force and effect on 12/12, 2017, after its passage and publication according to law.

Approved and adopted this 12th day of December, 2017.

Dean Newland



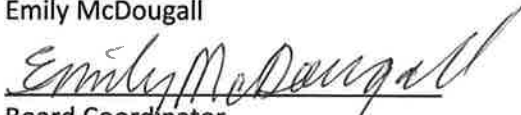
Board Chair

Board of Commissioners:

- District 1: Arlen Syverson
- District 2: Dean Newland
- District 3: Neal Illies
- District 4: John A. Nelson
- District 5: Daniel Stenseng

ATTEST:

Emily McDougall



Board Coordinator

Published in the Leader Record, this 6th day of December, 2017.

DOC# A171310

Clearwater County Administrative Penalty Order Plan

for Buffer Law Implementation

December, 2017

I. Buffer Requirements

1. Buffer width

Except as provided under sections I.4 and I.5, a landowner must maintain a buffer area on a water shown on the buffer protection map as follows:

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

2. Buffer Measurement

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

3. Use of Buffer Area

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

4. Exemptions

- A. The requirement of section I.1 does not apply to land that is:
 - i. Enrolled in the federal Conservation Reserve Program;
 - ii. Used as a public or private water access or recreational use area including stairways, landings, picnic areas, access paths, beach and watercraft access areas, and permitted water-oriented structures as provided in the shoreland model standards and criteria adopted pursuant to Minn. Stat. §103F.211 or as provide in an approved local government shoreland ordinance;
 - iii. Covered by a road, trail, building or other structures; or
 - iv. Regulated by a national pollutant discharge elimination system/state disposal system (NPDES/SDS) municipal separate storm sewer system, construction or industrial permit under Minnesota Rules, chapter 7090, and the adjacent waterbody is provided riparian protection in accordance with those rules;

DOC# A171310

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

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

5. Alternative practices

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

II. Compliance Determinations

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

Compliance status will be determined by Clearwater County:

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

1. Notification of Noncompliance

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

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

III. Enforcement and Penalty Procedures

1. Corrective Action Notice

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

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

The landowner may be sent a combined corrective action notice and APO as provided in item 2 so long as the combined notice/APO includes all the elements of both. To allow for local appeal of the Corrective Action Notice, it should be made separate of the Administrative Penalty Order (an APO requires appeal directly to the BWSR executive director.)

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

Within thirty days of receipt of the Corrective Active Notice, the landowner or agents or operators may appeal to the county the specific findings of the violation. It should be noted that this appeal pertains to the details leading to the County's notice. A corrective action notice is not considered a final decision and is not subject to appeal under the provisions of Minn. Stat. §103F.48, subd. 9. The time period for compliance and the initiation of a penalty should be put on hold while any appeal is pending for up to 60 days.

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

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

2. Clearwater County's Use of Administrative Penalty Orders.

A. Enforcement by Clearwater County

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

B. Clearwater County's enforcement team

Clearwater County Environmental Services will act as the County Enforcement team to review the specific facts of each violation and develop APOs.

C. Amount of penalty

Clearwater County Environmental Services staff may issue an APO, as provided for in Minn. Stat. §103B.101, subd. 12a against a landowner or his/her agent or operator that does not comply with a corrective action notice. The APO should be sent with the corrective action notice, alternatively, a combined corrective action notice and APO may be sent so long as the combined notice/APO includes all the elements of both. The penalty will continue to accrue until the violation is corrected as provided in the corrective action notice and APO.

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

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

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

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

- (a) \$50 per parcel per day for 180 days after issuance of the corrective action notice; and
- (b) \$200 per parcel per day after 180 days following the time period in (a).

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

D. Order. The APO should include:

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

Pursuant to §103F.48, subd. 7(d) all or part of the penalty may be forgiven based on the correction of the

noncompliance by the date specified in the APO by the landowner or his/her agents or operators. If part or all of the penalty is forgiven, the reasons and the amount of the penalty that has been forgiven will be documented in the enforcement file.

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

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

3. Administrative Penalty Order Procedures

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

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

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

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

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

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

accrue until the violation is corrected as provided in the corrective action notice and APO.

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

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

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

IV. Definitions

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