RESOLUTION NO. 2019-31
RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

APPROVING REVISED INTERNAL POLICY on RULE/PERMIT ENFORCEMENT

Manager Walter offered the following Resolution and moved its adoption, seconded by Manager Bradley:

WHEREAS pursuant to Minnesota Statutes §§103D.335 and 103D.341, the Rice Creek Watershed District ("District") has adopted and implements rules governing permits for land disturbance within the watershed that may affect water resources;

WHEREAS improperly managed development or other work can injure water resources within the watershed;

WHEREAS in its regulatory compliance activity, the District seeks to consider circumstances and avoid compliance burdens unrelated to water resource protection;

WHEREAS consistent administration of the District’s regulatory program enhances cooperation and efficiency, and avoids inequitable burden on those conforming with good practices and District permit requirements;

WHEREAS on February 25, 2009, the District Board of Managers ("Board") adopted Resolution 2009-05 to integrate these considerations and establish a consistent framework for District administration of its regulatory enforcement program;

WHEREAS on the basis of its program experience since the adoption of Resolution 2009-05, the District has identified several refinements to this framework to enhance the efficiency of working with permittees to achieve compliance, and otherwise to incorporate intervening changes in the delegated authority of the District administrator;

THEREFORE BE IT RESOLVED that the attached policy titled “Internal Policy on Rule/Permit Enforcement” is adopted and supersedes the prior version of the policy approved on February 25, 2009;

BE IT FURTHER RESOLVED that as stated in the policy, the District administrator and District staff may exercise judgment and deviate from the terms of the policy on the basis of specific circumstances, so as to best fulfill District purposes; and

BE IT FINALLY RESOLVED that the District administrator is to incorporate this resolution and revised policy into the District’s Policies and Procedures Manual.
The question was on the adoption of the Resolution and there were 3 yeas and 12 nays as follows:

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Upon vote, the Chair declared the Findings and Order **passed**.

Michael Bradley, Secretary

Dated: December 11, 2019

* * * * * * * * * * *

I, Michael Bradley, Secretary of the Rice Creek Watershed District, do hereby certify that I have compared the above resolution with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 11th day of December, 2019.

Michael Bradley, Secretary
Internal Policy on Rule/Permit Enforcement
(approved February 25, 2009; revised December 11, 2019)

This policy is for RCWD internal use only in order to govern relations between the Board of Managers and RCWD staff. It is not intended to and does not create any right or expectation in any person subject to RCWD permit requirements or any other third party. The Board of Managers may amend this policy or make exceptions to it as it deems appropriate. In implementing the RCWD regulatory program, staff may exercise judgment and deviate from the terms of this policy on the basis of specific circumstances, so as to best fulfill RCWD purposes.

CAPROC – conditional approval pending receipt of conditions

- CAPROC (soon to expire) no work started / no substantial change in project scope
  o Send out notice to applicant prior to expiration of CAPROC (4-6 Weeks)
  o Request applicant to:
    ▪ Get permit (rules at time of original CAPROC apply)
    ▪ Usually administrative items & surety
  OR
  o Re-apply for permit (rules do not provide for CAPROC extension)
    ▪ No substantial change in project scope
    ▪ Rules at time of reapplication apply (project not substantially affected by current rules)
    ▪ Basically extends CAPROC 12 months
    ▪ Delegate permit approval to Administrator

- CAPROC (soon to expire) no work started / substantial change in project scope
  o Applicant must re-apply for permit; rules at time of re-permitting apply
  o Board Approval unless otherwise delegated to Administrator

- CAPROC expired / no work started on site / no substantial change in project scope
  o Applicant must re-apply for permit
  o Rules at time of re-permitting would apply (project not substantially affected by current rules)
  o No application fee
  o Delegate permit approval to Administrator

- CAPROC expired / no work started on site / substantial change in project scope
  o Applicant must re-apply for permit
  o Rules at time of re-permitting would apply
  o Standard fee
  o Board approval unless otherwise delegated to Administrator

- CAPROC current / work started without a permit
  o If no significant threat of pollution to waters of the state or WCA violation is suspected
    ▪ Notify applicant within 24 hours (cc: Notice by mail to Board)
      ▪ Violation of rules exist
      ▪ 10 days to comply with all CAPROC conditions (no extension, no grace)
      ▪ Any work on-site it at applicant’s risk
    ▪ If no response in 10 days (complete fulfillment of CAPROC) and work is not near completion, staff issues letter advising that failure to fulfill
CAPROC by stated deadline may result in Compliance Order; if work is
near completion, staff issues Compliance Order (cc: Notice by mail to
Board)
- If CAPROC is not fulfilled as requested, staff issue Compliance Order (cc:
Notice by mail to Board)
  - Staff issued Compliance Order considered at next Board meeting
    (potential need for amendment to agenda); Board will issue
    superseding order, initiate civil action or otherwise
  - If a significant threat of pollution to waters of the state or WCA violation is
    suspected issue Compliance Order; request DNR Conservation Officer and/or
    PCA Official to issue order. (cc: Notice by mail to Board)
    - Special or emergency board meeting or Staff issued Compliance Order
      considered at next Board meeting (potential need for amendment to
      agenda); Board will issue superseding order, initiate civil action or
      otherwise.

- CAPROC expired / work started
  - If no significant threat of pollution to waters of the state or WCA violation is
    suspected
    - Notify applicant within 24 hours (cc: Notice by mail Board as well)
      - Violation of rules exist
      - 10 days to reapply for permit (no extension, no grace)
        - Rules at time of re-permitting apply
        - Significant changes require Board approval
        - No significant changes, akin to original CAPROC,
          administrator approval
      - Any work on-site is at applicant’s risk
    - If no response in 10 days (submitted complete application), and work is
      not near completion, staff issues letter advising that failure to reapply by
      stated deadline may result in Compliance Order; if work is near
      completion, staff issues Compliance Order (cc: Notice by mail to Board)
  - If applicant has not reapplied as requested, staff issue Compliance Order
    (cc: Notice by mail to Board)
    - Staff issued Compliance Order considered at next Board meeting
      (potential need for amendment to agenda); Board issues
      superseding order, initiates civil action or otherwise
  - If a significant threat of pollution to waters of the state or WCA violation is
    suspected, staff issue Compliance Order; request DNR Conservation Officer
    and/or PCA Official to issue order. (cc: Notice by mail to Board)
    - Staff issued Compliance Order considered at next Board meeting
      (potential need for amendment to agenda); Board issues
      superseding order, initiates civil action or otherwise
      - If surety is available then use to resolve issue

No Application or Incomplete Application

- Work started
  - If no significant threat of pollution to waters of the state or WCA violation is
    suspected
    - Notify applicant within 24 hours (cc: Notice by mail Board as well)
• Violation of rules exist
• 10 days to apply for permit (no extension, no grace)
  o Rules at time of present permitting apply
  o Requires Board approval unless otherwise delegated to
    Administrator
• Any work on-site is at applicant’s risk
  ▪ If no response in 10 days (submitted complete application), and work is
    not near completion, staff issues letter advising that failure to apply by
    stated deadline may result in Compliance Order; if work is near
    completion, staff issues Compliance Order (cc: Notice by mail to Board)
  ▪ If applicant does not apply as requested, staff issue Compliance Order
    (cc: Notice by mail to Board)
    • Staff issued Compliance Order considered at next Board meeting
      (potential need for amendment to agenda); Board issues
      superseding order, initiates civil action or otherwise
  ▪ If a significant threat of pollution to waters of the state or WCA violation is
    suspected, staff issue Compliance Order; request DNR Conservation Officer
    and/or PCA Official to issue order. (cc: Notice by mail to Board)
    • Staff issued Compliance Order considered at next Board meeting
      (potential need for amendment to agenda); Board issues superseding
      order, initiates civil action or otherwise

Permits

• Permit (current, applicant failure to comply with permit terms)
  o Notify applicant
    ▪ Compliance with permit terms is required
      • 10 days to comply with specific permit term (no extension, no
        grace)
      • Any work on-site it at applicant’s risk
    ▪ If no response in 10 days (complete fulfillment of permit requirements),
      and work is not near completion, staff issues letter advising that failure to
      comply by stated deadline(s) may result in Compliance Order; if work is
      near completion, staff issues Compliance Order (cc: Notice by mail to
      Board)
  ▪ If applicant does not achieve requested compliance, staff issue
    Compliance Order (cc: Notice by mail to Board)
    • Staff issued Compliance Order considered at next Board meeting
      (potential need for amendment to agenda).
      o Board issues superseding order, initiates civil action or
        otherwise
      o Use surety if available
• Permit (soon to expire, 2 months)
  o Send out notice to applicant prior to expiration of Permit
  o Request applicant to:
    • Request permit extension
      • If no change in scope of project; surety secure
        o Delegate permit extension to Administrator
      • If substantial change in project scope is proposed
        o Require extension approval by Board unless otherwise
          delegated to administrator

OR
• If project is complete notify District and request final inspection and close-out

OR

• If no work has started notify District that applicant has decided to let permit expire and request return of surety, release of agreements, vacation of easements, declarations.

• Permit expired / work not completed
  o If no significant threat of pollution to waters of the state or WCA violation is suspected
    ▪ Notify applicant within 24 hours *(cc: Notice by mail Board as well)*
      • Violation of rules exist
      • Any work on-site is at applicant’s risk
      • 10 days to reapply (means submittal of application, explanation) for permit
        o No significant change in scope of work
        o No significant change from application of current rule
        o Re-permitting under rules of original permit
        o Delegate permit approval to Administrator
      OR
      o Significant change in scope of work
      o Significant change from application of current rule
      o Permit amendment with project change evaluated under rules at time of amendment
      o Board Approval unless otherwise delegated to administrator
      OR
      o Variance Application
      o Board Approval
    ▪ If no response in 10 days and work is not near completion, staff issues letter advising that failure to reapply by stated deadline may result in Compliance Order; if work is near completion, staff issues Compliance Order *(cc: Notice by mail to Board)*
    ▪ If applicant does not reapply as requested, staff issue Compliance Order; Staff issued Compliance Order considered at next Board meeting (potential need for amendment to agenda). *(cc: Notice by mail to Board)*
      o Board to issue superseding order, initiate civil action or otherwise
        ▪ Use surety if available
  o If a significant threat of pollution to waters of the state or WCA violation is suspected, staff issue Compliance Order; request DNR Conservation Officer and/or PCA Official to issue order. *(cc: Notice by mail to Board)*
    ▪ Staff issued Compliance Order considered at next Board meeting (potential need for amendment to agenda); Board to issue superseding order, initiate civil action or otherwise
      • Use surety if available

**Wetland Conservation Act**

• Wetland delineations
  o Notify landowners with approved delineations 3 months prior to the five year WCA limit on delineations that:
- Current delineation approval is set to end
- Applicant can request re-approval with documentation that site conditions have not changed. (This would apply to those that have "expired" as well)