

# **Minnesota Board of Water and Soil Resources**

## **Minnesota Rules, parts 8410.0010 to 8410.0180**

### **Rules Relating to Metropolitan Water Management**

#### **Statement of Need and Reasonableness**

**July 8, 2014**

##### **I. INTRODUCTION**

This proposed rulemaking would amend Minnesota Rules, Chapter 8410.

This statement (“SONAR”) describes and explains the need for and reasonableness of the amendment of rules that govern the water management program in the seven county metropolitan area (metropolitan area). The rules specify, among other items, the standards and requirements of watershed management plans submitted to the Board of Water and Soil Resources (“Board” or “BWSR”) for approval pursuant to Minnesota Statutes, section 103B.231. It summarizes the evidence and arguments the Board is relying upon to justify the proposed amendment of rules. It has been prepared to satisfy the requirements of Minnesota Statutes, sections 14.131 and 14.23, and Minnesota Rules, part 1400.2070.

Minnesota Statutes, section 103B.231, subdivision 1 requires a watershed management plan for all land within the metropolitan area. A watershed management plan must be prepared, adopted and implemented under Minnesota Statutes, sections 103B.205 to 103B.255 for all minor watershed units having more than 90 percent of their area within the metropolitan area. For minor watershed units having 90 percent or less of their area within the metropolitan area, the watershed management plan must be completed under Minnesota Statutes, sections 103B.205 to 103B.355, as determined by the Board. The rules apply solely to water management under Minnesota Statutes, sections 103B.205 to 103B.255.

The draft proposed rule amendment is presented in part V of this statement along with the SONAR information specific to each. Preliminary to part V are sections providing SONAR information about the rules in general.

### **A. Existing Rules**

The Board adopted the existing rules, Minnesota Rules, parts 8410.0010 to 8410.0180, on May 27, 1992. The rules became effective on August 1, 1992. The rules set forth standards and requirements for watershed management plans, local water management plans, plan amendments, plan implementation, joint powers agreements for watershed management organizations, removal of organization representatives, annual audits, annual reports, and non-implementation. The rules fully embraced the recommendations from the *Report of the Metropolitan Local Water Management Task Force to the Governor and Legislature of the State of Minnesota*, December 15, 1989.

### **B. Development of Proposed Rule Amendment**

There have been many changes in water management since 1992 when the existing rules were promulgated that necessitate an amendment of rules. Some of the changes include development of storm water Best Management Practices (BMPs), advances in storm water treatment systems, targeting systems using GIS and LIDAR data, an increase in data, increased data trend analyses, and Clean Water Funding. The federal rules that the state operates under for Total Maximum Daily Loads (TMDLs) were promulgated in 1992. The first U.S. Clean Water Act Section 303(d) impaired waters list was published for the state in 1998. The Watershed Restoration and Protection Strategy (WRAPS) was adopted by the legislature in 2013. The identification of impaired waters and preparation of plans to address impaired waters are changes that have taken place since 1992 that necessitate an amendment of rules.

The proposed rule amendment moves away from an overly prescriptive, one-size-fits-all approach to a more result-oriented framework. Future watershed management plans under the proposed rule amendment would consist of periodically updated inventories and goals, and frequently updated implementation and capital improvement sections. Future watershed management plans would be streamlined because the proposed rule amendment provides for the use of the internet for electronic communication and references to documents and data. Future watershed management plans would be more closely aligned and coordinated with federal programs.

The draft proposed rule amendment was developed with a Rule Advisory Committee and through close consultation with various stakeholders throughout development of the amendment. The Rule Advisory Committee consisted of representatives from the Minnesota Department of Natural Resources, the Minnesota Pollution Control Agency, the Minnesota Department of Health, the Metropolitan Council, the League of Minnesota Cities, watershed management organizations, soil and water conservation districts, legal

counsel for watershed management organizations and engineering consultants for watershed management organizations. Stakeholders involved in development of the draft proposed rule amendment represented the Minnesota Department of Agriculture, the Minnesota Department of Transportation, the University of Minnesota Water Resources Center, the Association of Minnesota Counties, the Minnesota Association of Watershed Districts, the Minnesota Association of Soil and Water Conservation Districts, and the Builders Association of Minnesota. The representatives were responsible for distributing draft rule amendment language, the draft proposed rule amendment, and coordinating comments from each of their respective agencies or associations. Consensus was reached on almost all of the draft proposed rule amendment.

To begin the permanent rulemaking process, a Request for Comments dated February 25, 2013 on the draft proposed rule amendment was distributed according to an Additional Notice Plan that was approved by the Office of Administrative Hearings on September 7, 2012. The Additional Notice Plan was designed to provide notice to all persons who may be affected by the proposed rule amendment. The Additional Notice Plan also includes giving notice required by statute, including publication in the State Register and notice given to the Legislature as required by Minnesota Statutes, section 14.116.

The Request for Comments was published in the State Register on March 4, 2013. The Request for Comments, the draft rule amendment and other information were posted on the BWSR website by March 4, 2013. The Request for Comments was sent via U.S. postal service mail or electronic mail between February 26 and March 4, 2013 to the following:

- the Governor's Legislative Coordinator; the chairs and ranking minority members of the Senate Environment and Energy Committee, the Senate Environment, Economic Development, and Agricultural Division of the Senate Finance Committee, the House Environment and Natural Resources Policy Committee, the House Environment, Natural Resources, and Agriculture Finance Committee; and the chair of the Legislative Coordinating Commission;
- the Rule Advisory Committee members and stakeholders stated in the prior paragraph;
- all of the seven county metropolitan area watershed management organizations, watershed districts, counties, cities, towns, soil and water conservation districts;
- the Minnesota Association of Watershed Districts, the Minnesota Association of Soil and Water Conservation Districts, the Minnesota Cities Stormwater Coalition;
- the Department of Agriculture, the Department of Health, the Department of Natural Resources, the Pollution Control Agency, the Department of Transportation, the Metropolitan Council, the University of Minnesota Water Resources Center;

- various legal, engineering and environmental firms including Smith Partners, Kennedy & Graven, Campbell Knutson, Lawson Law, Malkerson Gunn Martin, Jack Clinton Law, Michelle Ulrich Law, Emmons Olivier Resources, Wenck Associates, Barr Engineering, Houston Engineering, CH2M Hill, WSB & Associates, Stantec Bonestroo, HDR Engineering, Short Elliott Hendrickson;
- the Builders Association of the Twin Cities, the Minnesota Center for Environmental Advocacy, the Audubon Chapters of Minneapolis and St. Paul, the Izaak Walton League of Minnesota, the North Star Chapter of the Sierra Club;
- those on the agency’s rulemaking mailing list;
- press releases to general circulation newspapers and broadcast media in the seven county metropolitan area.

### **C. Alternative Format**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact Jim Haertel at the Minnesota Board of Water and Soil Resources, 520 Lafayette Road North, Saint Paul, MN 55155; telephone: 651-297-2906; fax: 651-297-5615; e-mail: jim.haertel@state.mn.us. Persons with hearing loss or speech disabilities may call us through Minnesota Relay at 1-800-627-3529.

## **II. STATUTORY AUTHORITY**

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority since, thus Minnesota Statutes, section 14.125 does not apply.

The Board’s statutory authority to adopt the proposed amendment of rules is given in Minnesota Statutes, as follows:

- Minnesota Statutes, section 103B.211, subd. 1, paragraph b: “The Board of Water and Soil Resources shall adopt rules prescribing minimum requirements for the content of watershed management organization joint powers agreements.”
- Minnesota Statutes, section 103B.227, subdivision 3: “The Board of Water and Soil Resources shall adopt rules prescribing standards and procedures for removing members of watershed management organization boards for just cause.”

- Minnesota Statutes, section 103B.231, subdivision 6, paragraph b: “The board [of Water and Soil Resources] shall adopt rules to establish standards and requirements for amendments to watershed plans. The rules must include:
  - (1) performance standards for the watershed plans, which may distinguish between plans for urban areas and rural areas;
  - (2) minimum requirements for the content of watershed plans and plan amendments, including public participation process requirements for amendment and implementation of watershed plans;
  - (3) standards for the content of capital improvement programs to implement watershed plans, including a requirement that capital improvement programs identify structural and nonstructural alternatives that would lessen capital expenditures; and
  - (4) how watershed plans are to specify the nature of the official controls required to be adopted by the local units of government, including uniform erosion control, storm water retention, and wetland protection ordinances in the metropolitan area.”
  
- Minnesota Statutes, section 103B.231, subdivision 10, paragraph b: “The Board of Water and Soil Resources shall adopt rules establishing standards and criteria for making determinations of whether watershed management organizations and counties are implementing watershed plans as required under subdivision 1.”
  
- Minnesota Statutes, section 103B.231, subdivision 14: “The Board of Water and Soil Resources shall adopt rules establishing:
  - (1) requirements for annual watershed management organization financial reports to the board, including a report on administrative, project, and other expenditures;
  - (2) standards for annual financial audits by certified public accountants, procedures for the board to follow before ordering state financial and performance audits as determined by the board, and procedures for charging the costs of financial and performance audits to the watershed management organization; and
  - (3) requirements for the content of annual activity reports to the board, which must include the number and type of permits issued, complaints received, plan and ordinance violations, projects constructed, new officers installed, variances granted, status of local unit adoption and enforcement of model ordinance requirements, and financial conditions of the watershed management organization.”

- Minnesota Statutes, section 103B.235, subdivision 2, paragraph b: “The Board of Water and Soil Resources shall adopt rules establishing minimum local plan standards and a model environmental management ordinance for use by local government units in implementing local water plans. The standards apply to plan amendments made to conform to changes in the watershed plans that are adopted under the board rules required by section 103B.231, subdivision 6.”
- Minnesota Statutes, section 103B.239: “The Board of Water and Soil Resources shall review the rules relating to sections 103B.205 to 103B.255 at least once every five years and adopt necessary amendments.”

In addition, the Board has general rulemaking authority for implementing all its programs pursuant to Minnesota Statutes, section 103B.101, subd. 7: “The board may hold public hearings and adopt rules and orders necessary to execute its duties.”

Under these provisions, the Board has the necessary statutory authority to adopt the amendment of rules.

### **III. THE NEED FOR THE RULE**

In addition to the requirements in Minnesota Statutes, sections 103B.211, 103B.227, 103B.231, and 103B.235, set forth in section II above, that “...the board [Board of Water and Soil Resources] shall adopt rules...”, the rules are necessary to establish standards, requirements, and procedures for watershed management plans, local water management plans, plan amendments, implementation of the plans, annual audits, annual reports, content of joint powers agreements, removal of organization representatives, and non-implementation.

Consistent with the requirement in Minnesota Statutes, section 103B.239 that “The Board of Water and Soil Resources shall review the rules relating to sections 103B.205 to 103B.255 at least once every five years and adopt necessary amendments.”, the amendment of rules is necessary to update the 21 year old rules to include advances in watershed management, water management technology, changes in watershed management philosophy, and to make changes based on experience gained from implementing the existing rule. These reasons are more fully explained, and other reasons are specified, at the beginning of section I.B, Development of Proposed Rule Amendment.

## IV. COMPLIANCE WITH VARIOUS STATUTORY REQUIREMENTS

### A. Regulatory Analysis of Factors Required by Minnesota Statutes, section 14.131

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

**(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

Similar to the existing rules, the proposed rule amendment will affect watershed districts, watershed management organizations, counties, cities, towns, environmental advocacy groups, and state agencies in the metropolitan area.

As with the existing rules, the costs of the proposed rule amendment will largely be borne by watershed districts, watershed management organizations, counties, cities, and towns in the metropolitan area.

The proposed rule amendment will benefit all people associated with surface water resources in the metropolitan area.

**(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The costs BWSR and other state agencies will incur in the implementation and enforcement of the proposed rule amendment are about the same as with the existing rules.

No part of the proposed rule amendment is anticipated to have an impact on state revenues.

**(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

There is no known method or procedure known to the agency or the Rule Advisory Committee that would be less costly or less intrusive for achieving the purpose of the proposed rule amendment.

**(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

No alternative method for achieving the purpose of the proposed rule amendment was seriously considered by the agency or the Rule Advisory Committee. The amendment of rules must fulfill certain statutory requirements and there are no other known methods to achieve those requirements.

**(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

As with the existing rules, the costs of the proposed rule amendment will largely be borne by watershed districts, watershed management organizations, counties, cities, and towns in the metropolitan area. The costs of the proposed rule amendment will be about the same as with the existing rules.

**(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

If the proposed rule amendment is not adopted, the costs incurred by watershed districts, watershed management organizations, counties, cities, and towns in the metropolitan area would be about the same as with the existing rules.

The consequences of not adopting the proposed rule amendment would be less focused water management work that is not coordinated well with changes during the past two decades in watershed management laws, techniques and philosophies. In the absence of the proposed rule amendment metropolitan area watershed management plans would continue to be developed, implemented and amended in the same manner as the previous 21 years. If the proposed rule amendment is not adopted future watershed management plans and programs would not benefit from much of what has been learned in administering the existing rules over the past two decades. Without the proposed rule amendment future watershed management plans would not be streamlined and as user friendly because the existing rules do not allow for the use of the internet. Future watershed management plans and programs would continue to be required to comply with all of the prescriptions in the existing rules that have largely negated a result-oriented framework. Without the proposed rule amendment there would be less flexibility in developing future watershed management plans and programs.

**(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

There are no known differences between the proposed rule amendment and existing federal regulations. The proposed rule amendment will result in watershed management being more closely aligned and coordinated with federal programs and regulations.

**(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

There is no known cumulative effect of the specific purpose of the proposed rule amendment with other federal and state regulations. Watershed management plans may establish standards that are stricter than federal or state regulations under the existing rule. The proposed rule amendment does not modify that.

**B. Other SONAR Content Required by Statute**

**1. Performance-based rules**

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

The proposed rule amendment is more performance-based and offers more flexibility than the existing rules. The proposed rule amendment will result in metropolitan area watershed management plans being more result-oriented. The proposed rule amendment requires goals to contain sufficient detail to allow for the success or failure of the goals to be measured. The proposed rule amendment requires the implementation actions to contain procedures to evaluate progress. The proposed rule amendment requires organizations to report every two years, at a minimum, on their progress on goals and implementation actions, then determine if any amendments to their watershed management plan are necessary and make such amendments. Almost all of the existing rule sections would have increased flexibility with the proposed rule amendment.

**2. Additional Notice**

Minnesota Statutes, section 14.23, requires the SONAR contain a description of the agency's efforts to provide additional notice to persons who may be affected by the

proposed rules or explain why these efforts were not made. The Board is using the same Additional Notice Plan that was used for providing notice of the Request for Comments described in Part I.B. The Additional Notice Plan was approved by the Office of Administrative Hearings on September 7, 2012. The Additional Notice Plan was designed to provide notice to all persons who may be affected by the proposed rule amendment including giving notice required by statute. Furthermore, the Board will provide the Notice of Intent to Adopt to all persons that responded to the Request for Comments.

The Notice of Intent to Adopt will be published in the State Register along with a copy of the proposed rule amendment, as approved by the Revisor of Statutes. The distribution of the Notice of Intent to Adopt will include a website address for the proposed rule amendment. The website will contain a “clean” version of the proposed rule amendment, a strikeout/underline version, the SONAR, Rule Advisory Committee meeting minutes, Rule Advisory Committee membership, a summary of the changes resulting from the proposed rule amendment, the existing rules, and other information. Further, the notice will state that copies of the rule amendment, a strikeout/underline version and the SONAR are available at the cost of reproduction from the agency contact person.

### **3. Consultation with Minnesota Management and Budget on Local Government Unit Impact**

As required by Minnesota Statutes, section 14.131, the Board has consulted with the Commissioner of Minnesota Management and Budget. The Commissioner was furnished copies of the documents furnished to the Governor’s Office for review and approval by the Governor’s Office prior to the Board publishing the Notice of Intent to Adopt. The copies were delivered on July 9, 2014. The documents included the July 9, 2014 Governor’s Office Proposed Rule and SONAR Form, the April 24, 2014 Revisor’s draft of the proposed rule amendment, and the July 8, 2014 draft SONAR.

### **4. Section 14.127 Analysis, Cost of Complying for Small Business or City**

Minnesota Statutes, section 14.127 of the Administrative Procedures Act requires an agency to determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000.00 for any “small business” (less than 50 full-time employees) or “small city” (less than 10 full-time employees). Although this analysis is not required to be included in the SONAR, the Board has chosen to place it here, as it is related to the information provided under sections IV.A.5 and IV.A.6 above.

The Board has determined that the proposed rule amendment will NOT result in an increased cost of more than \$25,000 for any small business or small city in the first year after enactment. As described in sections IV.A.5 and IV.A.6 above, the proposed rule amendment will result in costs that are about the same as with the current rules.

## **5. Section 14.128 Determination about Rules Requiring Local Implementation**

Minnesota Statutes, section 14.128 of the Administrative Procedures Act requires an agency to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. Although this determination is not required in the SONAR, the Board has chosen to place it here.

The Board has determined that the proposed rule amendment will NOT result in a local government unit having to adopt or amend an ordinance, other regulation or a joint powers agreement. Watershed management plans may require local government units to adopt or amend an ordinance or other regulation, however the proposed rule amendment does not require an existing watershed management plan to be amended. Local government ordinances currently required by watershed management plans will not be required to be amended as a result of the proposed rule amendment. Joint Power Agreement Watershed Management Organization agreements will not be required to be amended as a result of the proposed rule amendment.

## **V. RULE-BY-RULE ANALYSIS OF REASONABLENESS**

### **Summary of major changes to the existing rule due to the rule amendment.**

The rule amendment compared to the existing rule:

- emphasizes the identification and assessment of issues up front at the beginning of the planning process prior to development of a watershed management plan (“plan”) or ten-year plan revision; part 8410.0045;
- requires an initial, or “kickoff”, planning meeting; part 8410.0045, subpart 5;
- focuses an organization on developing a plan based on priority issues in consideration of water management problems and prevention, funding, and the regional/county/state/federal priorities that are identified up front; 8410.0045, subpart 1;
- recognizes increased availability of data and information on the web that reduces the volume of a plan and keeps a plan more current; part 8410.0060, subpart 1;
- increases flexibility and streamlines the plan by allowing references to resource data rather than including the actual data; part 8410.0060, subpart 1;

- requires goals for priority issues that have been identified as well as water quantity, water quality, public drainage systems, groundwater and wetlands; part 8410.0080;
- requires goals to be measurable; part 8410.0080, subpart 1;
- requires establishment of procedures for evaluating progress towards achieving goals and the implementation plan at a minimum of every two years; parts 8410.0080, subpart 1, 8410.0105, and 8410.0150, subpart 3, item E;
- requires plan amendment if evaluation of progress on the implementation actions warrants; parts 8410.0140, subpart 1, item C, and 8410.0150, subpart 3, item E;
- requires local water plans to be updated only once every ten years in conjunction with the Metropolitan Council's schedule for revising local comprehensive plans; parts 8410.0105, subpart 10, item b, and 8410.0160, subpart 6;
- allows a plan to also serve as a TMDL Implementation Plan; part 8410.0105, subpart 8, item B; and
- allows plans to establish an Environmental Trading Program; part 8410.0105, subpart 9.

## **8410.0010 SCOPE**

**Subpart 1. Application.** The effective date of the rule amendment was changed to one year after rule promulgation to allow ten-year plan amendments already underway to continue without delay and additional expense. Otherwise, ten-year plan amendments already underway would have to begin the process over again under the requirements in the rule amendment. Ten-year plan amendments already underway at the time of the rule amendment promulgation can reasonably be finished within one year. The effective date for ten-year plan amendment requirements is differentiated from the effective date for all other parts of the rule amendment to clearly specify when parts of the rule amendment become applicable.

**Subpart 2. Failure to implement plans.** Repealed. Contents of this subpart largely replaced with part 8410.0180, subpart 3a of the rule amendment; see discussion there.

## **8410.0020 DEFINITIONS.**

The terms as defined have the meanings given them. Some terms are defined in statute and are included in the proposed rule revision for consistency and as a convenience to the reader.

**Subpart 1. Applicability.** Changes only to revise the term “scope” to “applicability” and to citation to include the entire revised rule.

**Subpart 2. Board.** No change.

**Subpart 3. Capital improvement.** Change to clarify capital improvement means an improvement with an extended useful life to distinguish from improvements that are neither maintenance nor have an inherently extended useful life, such as vegetation management not associated with maintenance.

**Subpart 3a. Capital improvement program.** New definition for consistency with Minnesota Statutes, section 103B.205, subdivision 3.

**Subpart 4. Metropolitan Council or council.** Repealed. Definition renumbered to subpart 8b.

**Subpart 5. Flooding problem.** Repealed. Definition removed because it is not used in the rule amendment.

**Subpart 6. Groundwater plan.** Change to clarify the definition references groundwater plans approved by the Minnesota Board of Water and Soil Resources.

**Subpart 7. Local comprehensive plan.** No change.

**Subpart 8. Local government unit.** Change removes “or unit” from the definition as the terminology “unit” is no longer used in the rule amendment.

**Subpart 8a. Local water plan.** New definition for consistency with Minnesota Statutes, section 103B.235.

**Subpart 8b. Metropolitan Council.** Change renumbered definition from existing subpart 4. Change deleted “as”.

**Subpart 9. Metropolitan Water Management Act.** No change.

**Subpart 10. Minor plan amendment.** Repealed. Definition removed. Minor plan amendment procedures are in the rule amendment at part 8410.0140, subpart 2.

**Subpart 11. Minor Watershed Unit.** Repealed. Definition removed because it is not used in the rule amendment.

**Subpart 12. Metropolitan Urban Service Area or area.** Repealed. Definition removed because it is not used in the rule amendment.

**Subpart 13. Natural surface water storage and retention system.** Repealed. Definition removed because it is not used in the rule amendment.

**Subpart 14. Official controls.** Change for clarification purposes by including the subdivision number in the statutory citation.

**Subpart 15. Plan.** No change.

**Subpart 15a. Plan review agencies.** New definition for clarification purposes and consistency with Minnesota Statutes, section 103B.231, subdivision 7, paragraph a.

**Subpart 16. Plan review authorities.** Change for consistency with Minnesota Statutes, section 103B.231, subdivision 7, paragraph a.

**Subpart 17. Public waters.** No change.

**Subpart 18. Seven-county metropolitan area or metropolitan area.** Change for consistency with Minnesota Statutes, section 473.121, subdivision 2.

**Subpart 19. Subwatershed unit.** Repealed. Definition removed because it is not used in the rule amendment.

**Subpart 19a. Ten-year plan amendment.** New definition for distinguishing between different types of plan amendments. Plans must be for at least five years and not more than ten years pursuant to Minnesota Statutes, section 103B.231, subdivision 4, paragraph a. Because almost all organizations amend their plans every ten years, the new definition distinguishes ten-year plan amendments from minor plan amendments and other plan amendments. Minor plan amendments and other plan amendments often add projects not in a plan, add details to projects already in a plan, revise projects already in a plan, or remove projects from a plan. Ten-year plan amendments are comprehensive plan revisions that involve different procedures than minor plan amendments and other plan amendments, as set forth in the rule amendment at part 8410.0045, subparts 3 through 7.

**Subpart 20. Watershed.** No change.

**Subpart 21. Watershed district.** No change.

**Subpart 22. Watershed management organization or organization.** No change.

**Subpart 23. Wetlands.** Change for clarification purposes and consistency with Minnesota Statutes, section 103G.005, subdivision 19, paragraph (a).

**Subpart 24. Wetland banking system.** Repealed. Definition removed because it is not used in the rule amendment.

## **8410.0030 JOINT POWERS AGREEMENTS**

**Subpart 1. Requirements.** Change to clarify requirements apply to amending an existing joint powers agreement and not only to initial joint powers agreements establishing an organization. Existing joint powers agreements that are compliant with the existing rule do not need to be revised or amended purely as part of the rule amendment and changes made in this subpart. Items reordered for ease of use to the reader.

- A.** No change.
- B.** Requirement reordered from existing item H; no other change.
- C.** Requirement reordered from existing item B. Change to allow boundaries of the organization to be identified through a map based on parcels rather than a legal description. The change recognizes advances in technology for identifying parcels and boundaries and reduces the expense of generating a legal description.
- D.** Requirement reordered from existing item O; “membership” changed to “organization’s members” for accuracy.
- E.** Requirement reordered from existing item L; no other change.
- F.** Requirement reordered from existing item J; incorporated additional requirement for an agenda as part of meeting notification process.
- G.** Requirement reordered from existing item D; changed “a process” to “procedures” and other minor wording revisions for clarity.
- H.** Requirement reordered from existing item G and simplified to just advisory committee for public participation. Change is to ensure a joint powers agreement continues to allow for advisory committee establishment; however, the requirements for the constituents of the committee, e.g. technical or citizen, are removed to provide flexibility in establishment of advisory committees. The intent of this requirement for advisory committee participation in plan development and ten-year plan amendments has been incorporated into the rule amendment at parts 8410.0045, subpart 2 and 8410.0100, subpart 1, item D.
- I.** Requirement reordered from existing item E; changed to reflect broader authorities for generating revenue.

- J.** Requirement reordered from existing item I; no other change.
- K.** Requirement reordered from existing item M; no other change.
- L.** Requirement reordered from existing item F; changed to clarify that compensation is solely for “members of a joint powers board” and some minor wording revisions for clarity.
- M.** Requirement reordered from existing item K; no other change.
- N.** Requirement reordered from existing item C; no other change.
- O.** Requirement reordered from existing item N; no other change.

**Subpart 2. Updating.** Changed to remove artifact from existing rule and to provide a method for ensuring joint powers agreements are consistent with the rule amendment as plans are amended over time.

**Subpart 3. County membership.** No change.

#### **8410.0040 REMOVAL OF ORGANIZATION REPRESENTATIVES**

This part was split into two subparts as a convenience to the reader and to better distinguish between removal for violations and when at-will removal is applicable. Change also removes the Board of Water and Soil Resources from the appeal process in regards to local government decisions.

**Subpart 1. Removal for Violations.** Change to require a majority vote for removal by the appointing authority and specify that violation may include violation of bylaws.

**Subpart 2. Removal; elected officials, at-will members.** Change to clarify that the subpart applies to members of joint powers boards, broaden the requirement to apply to more than elected officials who are not re-elected to include when officials are no longer serving for reasons outside the election process.

#### **8410.0045 ISSUE IDENTIFICATION AND ASSESSMENT**

New part is a combination of the existing rule parts 8410.0070, 8410.0080, 8410.0090, 8410.0110, and 8410.0120 as indicated below.

**Subpart 1. Priority Issues.** Incorporates the requirements of existing rule part 8410.0120.

**A.** Consistent with existing rule part 8410.0120, however the identification is of priority issues on the front end at the beginning of the planning process that are then carried through to the implementation components rather than being prioritized after the implementation components are identified. The item has also been reformatted for convenience to the reader.

Intent in both items A and B is to gain efficiency in the planning process as well as in implementation by selecting the highest needs first resulting in more focused plans and targeted funding. Most organizations have been amending plans in this manner during the past several years because it is logical to do so.

**B.** As with item A, this item specifically requires prioritization of subsequent goals and implementation actions based on the priority issues required in item A rather than focusing prioritization at the end of the planning process.

**Subpart 2. Advisory committee.** New subpart included in the rule amendment for consistency with Minnesota Statutes, sections 103D.331 and 103D.337 pertaining to watershed districts, to provide clarity in expectations for committee involvement in the planning process, and to incorporate the intent for advisory committee involvement in plan development and amendments that was modified from existing rule part 8410.0030 Joint Powers Agreements, subpart 1, former item G; now item H. Advisory committees for the purposes of making recommendations on a ten-year plan amendment are also included as a requirement of implementation actions in the rule amendment at part 8410.0105, subpart 1, item D. Intent is to increase the opportunities for stakeholder participation in the initial phases of the planning process when the impact can be most significant to the plan and most cost effective to the planning process.

**Subpart 3. Plan review agency notification and involvement in plan development.** Incorporates the requirements from existing rule part 8410.0070 for requesting information from plan review agencies, revises the language for clarity, emphasizes priority rather than broad or generic issues, and allows summaries rather than exhaustive amounts of water resource information that is now largely available on the internet. The emphasis on priority issues is intended to give direction to the plan review agencies with an overall intent to increase efficiencies for both the agencies and the plan by concentrating on priorities. The timeline for review agencies to submit requested information is increased from 45 to 60 days.

**Subpart 4. Review of local issues and controls.** Incorporates and streamlines the corresponding requirements from existing rule parts 8410.0070, 8410.0090 and 8410.0110, subpart 1 and changes the procedures for review of the information. Changes include: increasing the timeline for submitting requested information from 45 to 60 days; defining stakeholders applicable to this subpart to explicitly include Minnesota Department of Transportation, soil and water conservation districts, and entities on the organization's mailing list; and removing the specific list of topic areas required to be requested with the

intent of making the request requirement less prescriptive. Intent and emphasis in reviewing the local controls is to identify gaps that would hinder the organization from meeting its goals.

**Subpart 5. Initial planning meeting.** New requirement for a “kickoff” meeting to begin development of the plan; reflective of common practice in plan development and amendments during the past several years, included to increase consistency and accountability in the plan development process, and to better ensure participation by stakeholders in the initial phases of plan development or amendment rather than near or at the end of plan development when change in direction is more time consuming and costly to implement.

**Subpart 6. Relationship with other programs.** Incorporates and modifies portions of the intent of existing rule part 8410.0070 Impact on Other Units of Government. The change is to ensure the organization considers the information received through subpart 3 of this part and coordinates the plan and activities with other units of government within and surrounding the organization. The intent is to decrease the potential for conflict and increase potential for efficiencies in implementation by overtly requiring coordination.

**Subpart 7. Assessment of issues and identification of priority issues.** Incorporates the requirements from existing rule part 8410.0090 Assessment of Problems. Change requires identification of priority issues for the organization based on input received in part 8410.0045 and 8410.0060 rather than requiring the organization to assess and prioritize based on a prescriptive list provided in the rule. This is a key change to the existing rule because the priority issues identified in this subpart focus the development of the plan, plan amendment or ten-year plan revision.

## **8410.0050 EXECUTIVE SUMMARY**

The part was reformatted for convenience to the reader. The items listed are required in the executive summary by the rule amendment rather than suggested for inclusion as in the existing rule. Items that have been deleted or revised can still be included in an executive summary, however they are not required.

- A.** Membership of the organization’s board of managers removed because it is required on the organization’s website under part 8410.0150, subp. 3a of the rule amendment and is more current. Partial history of the organization removed because it was not useful in carrying out the mission of the organization, is in a previous plan that may now be included by reference, and is oftentimes on an organization’s website.
- B.** The general boundaries of the organization replaced with a map because a map is a quicker, easier and more accurate method of presenting the general boundaries.

- C. “Problems” changed to “primary issues addressed in the plan” to avoid vagueness and to focus on the plan.
- D. “Goals” changed to “main goals” because it is a summary.
- E. “Potential solutions” changed to “major actions in the plan” to present how the plan sets forth what the organization will accomplish.
- F. Instead of presenting the content of local plans, the responsibilities of local governments and any changes in those responsibilities from the previous plan would be presented under the rule amendment.

## **8410.0060 LAND AND WATER RESOURCES**

The part was simplified to be less prescriptive, and to recognize the inventory work that has occurred since the existing rule was originally adopted and changes in data and technology that cause land and water resource information to be significantly more accessible in recent years. Some items were deleted from this part because they were obsolete or, more typically, because the identification of priority issues in part 8410.0045 of the rule amendment will control what land and resource data is necessary in a plan. Additionally, the part was changed to specify the minimum map requirement for surface waters, but not specifically require remaining data to be included as maps. The intent of this change is to recognize the free public accessibility of these types of data electronically and reduce the expense of generating and printing maps, but not to minimize the requirement to provide basic information and analysis of these data necessary for understanding of the resources. The part was also reformatted into one subpart to reflect the simplification of language of the requirements.

**Subpart 1. Requirements.** Changed to allow incorporation by reference for existing records, plans, and publications rather than inclusion of these data into the plan if the information available is in a freely accessible location that is specified, such as the internet. The intent is to reduce the expense of reproducing this information by allowing reference, but not to minimize the requirement to provide basic information and analysis necessary for understanding of the resources. Elements from the remaining subparts in this part of the existing rule incorporated herein and simplified by removing extensive descriptions.

**Subpart 2. Precipitation.** Repealed. Incorporated into subpart 1, item D of the rule amendment. Requirement to use seven-county metropolitan area precipitation data for hydrologic and hydraulic design removed to allow for flexibility to use more refined precipitation data available.

**Subpart 3. General geology and topographic data.** Repealed. General geology incorporated into subpart 1, item C of the rule amendment. Topography incorporated into

subpart 1, item A of the rule amendment and language simplified. Requirement for identification of groundwater surface water interactions moved to subpart 1, item G of the rule amendment. Requirement for a map defining subwatershed units deleted because the maps are on the internet.

**Subpart 4. Surface water resource data.** Repealed. This subpart and many of its items incorporated into subpart 1, items E and F of the rule amendment or as otherwise specified. Language simplified significantly. Subparts referenced in items A through L are for part 8410.0060 of the rule amendment unless another part of the rule amendment is specified.

**A.** Minimum requirement for a map of surface water resources in subpart 1 and further defined in subpart 1, item E incorporates the intent of this item. Identification of control structures incorporated into subpart 1, item H.

**B.** Minimum requirement for a map of surface water resources in subpart 1 and further defined in subpart 1, item E includes wetlands. Removes requirement for National Wetlands (NWI) or Metropolitan Mosquito Control (MMC) wetland inventories as local wetland inventories are more detailed and generally based on NWI and/or MMC.

**C.** Item deleted; no longer necessary due to the Wetland Conservation Act. The Wetland Conservation Act became effective in January, 1992 and the existing rule was promulgated in May, 1992. At the time the existing rule was developed the functioning of the Wetland Conservation Act was unknown.

**D.** Item deleted; will be incorporated into plans when identified as a priority issue through part 8410.0045, subparts 3 and 7, or a necessary component of an identified priority issue, otherwise may be incorporated into plans if desired.

**E.** Incorporated into subpart 1, item H.

**F.** Incorporated into subpart 1, item F. Discussions of inconsistencies or additional data requirements will be incorporated into plans when identified as a priority issue through part 8410.0045 or a necessary component of an identified priority issue.

**G.** Item deleted; will be incorporated into plans when identified as a priority issue through part 8410.0045 or a necessary component of an identified priority issue.

**H.** Item deleted; up to date information is readily available on the internet.

**I.** Incorporated into subpart 1, item F and language changed to emphasize water quality trends rather than simply data. Specification of where the water quality data may come from deleted; however, data or analysis from these entities will be incorporated into plans when identified as a priority issue through part 8410.0045 or as a necessary component of an identified priority issue. Data summary requirements increased in frequency and incorporated into part 8410.0105, subpart 5.

**J.** Requirement for identification of water monitoring sites removed from this part and incorporated into part 8410.0105, subpart 5.

**K.** Item deleted; will be incorporated into plans when identified as a priority issue through part 8410.0045, or a necessary component of an identified priority issue, otherwise may be incorporated into plans if desired.

**L.** Item deleted; will be incorporated into plans when identified as a priority issue through part 8410.0045, or a necessary component of an identified priority issue, otherwise may be incorporated into plans if desired.

**Subpart 5. Groundwater resource data.** Repealed. Incorporated into subpart 1, item G of the rule amendment and language simplified. Intent remains for groundwater data to be included as required by a county groundwater plan. Applies only to county groundwater plans that have been approved and adopted. Approval and adoption procedures are in Minnesota Statutes, section 103B.255.

**Subpart 6. Soil data.** Repealed. Incorporated into subpart 1, item B of the rule amendment and language simplified.

**Subpart 7. Land use and public utility services.** Repealed. Incorporated into subpart 1, item L of the rule amendment and requirement for identification of public utility services deleted. New requirement to use comprehensive plans as the basis for the information to avoid duplication of efforts and ensure the same information is used. Requirements for maps specifically included in the plan showing existing and anticipated landuse and the metropolitan urban service area deleted as these maps are in freely accessible locations.

**Subpart 8. Water-based recreation areas and landownership.** Repealed. Incorporated into subpart 1, items K and L of the rule amendment.

**Subpart 9. Fish and wildlife habitat.** Repealed. Incorporated into subpart 1, item J of the rule amendment.

**A.** Requirement removed but can be incorporated into plans when identified as a priority issue through part 8410.0045, subpart 3 of the rule amendment.

**B.** Requirement removed but can be incorporated into plans when identified as a priority issue through part 8410.0045, subpart 3 of the rule amendment.

**C.** Requirement removed but can be incorporated into plans when identified as a priority issue through part 8410.0045, subpart 3 of the rule amendment.

**Subpart 10. Unique features and scenic areas.** Repealed. Indirectly incorporated into subpart 1, items J and L, can be more fully incorporated as applicable into plans when identified as a priority issue through part 8410.0045, subpart 3 of the rule amendment.

**Subpart 11. Pollutant sources.** Repealed. Incorporated into subpart 1, item I. Language simplified to more broadly include regulated pollutant sources and permitted wastewater discharges rather than listing specific types of regulated pollutant sources; however, the intent is the specific types listed in the former rule still apply inherently as regulated sources. Change also removes the exclusion of this information if listed in a county groundwater plan and suitable references are provided as references are now allowed for all items within this part.

## **8410.0070 IMPACT ON OTHER UNITS OF GOVERNMENT**

Repealed. Content and intent of this part incorporated into part 8410.0045 of the rule amendment.

## **8410.0080 ESTABLISHMENT OF GOALS**

Intent of changes to this part are to more acutely focus goals of the organization on the priority issues identified in part 8410.0045, subpart 7 of the rule amendment by being less prescriptive and enhance measurability of these goals. The language of this part was simplified by removing the term policy and focusing only on the term goals in consideration of the variable and interchangeable uses of these planning terms.

**Subpart 1. Requirements.** Renamed for consistency throughout the rule amendment. Changes to reflect goals must address the priority issues identified for the organization through part 8410.0045 of the rule amendment, require proactive resolution of conflict with other units of government rather than avoidance, and emphasize measurement and evaluation of the progress on attaining the goals. Intent of the changes are to reduce time and effort spent on non-priority issues, to preemptively resolve conflicts before the conflicts hinder implementation progress, and to overtly recognize the value of assessment in understanding future achievement of goals. Requirement to recognize relationship between land use and water quality moved to subpart 3 of this part of the rule amendment, and similar requirement added to subparts 2 and 8 of this part.

**Subpart 2. Water quantity.** Changes to emphasize establishment of goals to address priority water quantity issues identified for the organization through part 8410.0045 of the rule amendment and to incorporate requirement to recognize relationship between land use and water quantity. Requirements specific to Minnesota Statutes, section 103B.3365 removed because the statute was repealed. Volume, peak rate, base flow and imperviousness were added to this subpart for considerations in establishing goals.

**Subpart 3. Water quality.** Change to emphasize establishment of goals to address priority water quality issues identified for the organization through part 8410.0045 of the rule amendment. Addition that the goals must recognize current water quality trend direction.

Change to require overt recognition, rather than mere consideration, of relationship between land use and water quality. Change to require recognition of any deviation from state water quality standards rather than a recommendation to strive for compliance. Intent of this change is to recognize that local priorities, information, and/or funding may set a different goal of water quality of specific resources; and that even if implementation were maximized the length of time necessary to meet state standards may be longer than the duration of the plan.

**Subpart 4. Recreation, fish, and wildlife.** Repealed. Incorporated into subpart 1 of this part by reference to water management program purposes in Minnesota Statutes, section 103B.201 and may be included in a plan based on priority issues identified through part 8410.0045 of the rule amendment.

**Subpart 5. Enhancement of public participation; information and education.** Repealed. Focus of public participation in plan development moved to part 8410.0045 of the rule amendment where public participation and advisory committees can have a greater impact on setting the direction of the plan through early involvement in establishing priority issues, and to part 8410.0105, subpart 1, item D of the rule amendment where advisory committees are required for ten-year plan amendments. Focus of information and education moved to part 8410.0105, subpart 4 of the rule amendment.

**Subpart 6. Public drainage systems.** Change to expand the requirement to public drainage systems per Minnesota Statutes, section 103B.231, subdivision 6 to include all public drainage systems and not solely ditches, recognizing the importance of the full drainage system to water management.

**Subpart 7. Groundwater.** Change to proactively meet the intent of Minnesota Statutes, section 103B.231, subdivision 4, paragraph b, and subdivision 7 where the county must review and comment on the consistency of the plan with county groundwater plans at the end of the planning process. Change to clarify that this subpart only applies to county groundwater plans that have been approved by BWSR and adopted by the county. Also, change to encourage establishment of goals based on issues identified in the additional groundwater management documents listed in this subpart.

**Subpart 8. Wetlands.** The Wetland Conservation Act became effective in January, 1992 and the existing rule was promulgated in May, 1992. At the time the existing rule was developed the functioning of the Wetland Conservation Act was unknown. Changes to this subpart are based on twenty years of experience since inception of the Wetland Conservation Act. Change to add flexibility to the goal requirements for wetlands by continuing to require wetland management goals, but removing the prescriptive requirement for having goals for preservation, enhancement, restoration, and establishment. Also, removes the requirement to evaluate the need to establish a wetland banking system because there is a state wetland banking system and no banking systems have been established by organizations in the metropolitan area since the existing rule was promulgated. Adds requirement to recognize the relationship between wetland management and land use.

**Subpart 9. Erosion.** Repealed. Incorporated into subpart 1 of this part by reference to water management program purposes in Minnesota Statutes, section 103B.201. Also, separate soil erosion goals are unnecessary because erosion control is an integral part of the water quality goals in subpart 3 and the wetland management goals in subpart 8, and to a somewhat lesser degree but still an important part of the water quantity goals in subpart 2 and the public drainage system goals in subpart 6.

#### **8410.0090 ASSESSMENT OF PROBLEMS**

Repealed. Incorporated into part 8410.0045 of the rule amendment; see discussion under that part.

#### **8410.0100 IMPLEMENTATION PROGRAM**

Renumbered in the rule amendment to part 8410.0105; see primary discussion under that part. The following information under this part simply maps to where in part 8410.0105 the following subparts were moved.

**Subpart 1. Plan contents.** Incorporated into 8410.0105, subpart 1; see discussion there.

**Subpart 2. Regulatory Controls.** Incorporated into 8410.0105, subpart 6; see discussion there.

**Subpart 3. Stormwater and drainage design performance standards.** Incorporated into 8410.0105, subpart 6; see discussion there.

**Subpart 4. Information Program.** Incorporated into 8410.0105, subpart 4; see discussion there.

**Subpart 5. Data collection programs.** Incorporated into 8410.0105, subpart 5; see discussion there.

**Subpart 6. Management programs.** Incorporated into 8410.0105, subpart 3; see discussion there.

**Subpart 7. Potential structural solutions to problems.** Incorporated into 8410.0105, subpart 2; see discussion there.

## **8410.0105. IMPLEMENTATION OF ACTIONS**

This part contains the requirements for the most important section of a plan because the implementation section sets forth what an organization expects to accomplish during the life of the plan, which is usually ten years. It is the section of the plan that should receive the most effort during the planning process. This part specifies what programs and projects consist of, when they are scheduled to be undertaken, anticipated budgets, sources of revenue, regulatory controls necessary to attain the goals of the plan, and the responsibilities of local government units within the boundaries of the organization.

Part renumbered from 8410.0100 of the existing rule and changed title from Implementation Program to Implementation Actions. Requirements incorporated into this part from existing rule parts 8410.0060, subpart 4, items I and J; 8410.0080, subpart 5; 8410.0100; 8410.0110, subpart 3; 8410.0130; and 8410.0160.

**Subpart 1. Requirements.** Replaces existing rule parts 8410.0100, subpart 1, 8410.0130, subpart 1, and is renamed for consistency throughout the rule amendment. Change requires implementation actions to be prioritized in order to make the best use of available funding and to clearly set the course for the organization to follow. Change clarifies and specifies that the actions must be identified for the duration of the plan, and allows the plan to exclude specific required programs if the organization can sufficiently justify that the element is not needed. This part also includes an overt requirement for evaluating progress biannually, recognizing the value of assessment in understanding future achievement of goals. Portions of the language moved to the items below as a convenience to the reader.

**A.** New item; specifically requires a table summarizing the implementation actions as is common practice with many organizations, resulting in increased clarity and transparency of the planned actions. Incorporates requirements from parts 8410.0110, subpart 2 and 8410.0130, subparts 1 and 3 of the existing rule.

**B.** Change defining the responsibilities of who does what from a recommendation to a requirement to be in a plan. Language expanded from the existing rule to include other entities responsible for implementation in addition to local governments. Incorporates requirements from parts 8410.0100, subpart 1 and 8410.0130, subparts 2 and 3 of the existing rule.

**C.** Replaces existing rule part 8410.0130, subpart 5. Changes the requirement for defining the organization's role when local water plans are not implemented to defining the organization's process for evaluating and procedures for addressing when local water plans are not implemented. This provides clarity to future organization board members and transparency to local government units.

**D.** New requirement included to ensure proactive establishment of procedures for public involvement. See also parts 8410.0045, subpart 2 and 8410.0080, subpart 5 discussion.

**Subpart 2. Capital improvement program.** Replaces existing rule parts 8410.0100, subpart 7, 8410.0130, subpart 4, and a portion of part 8410.0130, subpart 3. Renamed consistent with Minnesota Statutes, section 103B.205, subdivision 3 and part 8410.0130, subpart 4 of the existing rule. Language is reformatted into one subpart without items and reorganized for clarity and consistency. Clarification of the requirement for schedule, estimated cost, and funding source for consistency with Minnesota Statutes, section 103B.205, subdivision 3. New requirement for a table similar to, consistent with, and can be done in conjunction with subpart 1, item A of this part. See discussion there.

**Subpart 3. Operation and maintenance programs.** Replaces existing rule part 8410.0100, subpart 6 and a portion of part 8410.0130, subpart 1. Language is simplified and requirements reduced to curtail redundancies in recognition of the overlapping requirements of the United States Environmental Protection Agency National Pollutant Discharge Elimination System permit program requirements. Emphasis of the operation and maintenance program is to focus on identifying and filling gaps in these programs that may hinder the organization's ability to achieve goals established under part 8410.0080 rather than prescriptively include all potential maintenance actions that would then require justification for not implementing as per subpart 1 of this part.

**Subpart 4. Information and education program.** Replaces existing rule part 8410.0100, subpart 4. New to this subpart is a requirement to outline the information and education program in the plan. This new requirement recognizes that involvement and education of the public is a critical element in achieving the goals of the plan. Changes to the annual communication requirement are for consistency with Minnesota Statutes, section 103B.227, subdivision 4, and to move the specificity in details of the annual communication to website requirements identified in part 8410.0150, subpart 3a of the rule amendment, which requires more frequent updates to maximize transparency. See also part 8410.0080, subpart 5 discussion.

**Subpart 5. Data collection program.** Replaces existing rule part 8410.0100, subpart 5. Language is reformatted into one subpart without items. The emphasis of data collection is changed from simply collecting data to ensuring data collection provides the organization with sufficient information to measure and evaluate progress toward achieving goals established under part 8410.0080. The subpart continues to include a list of monitoring program elements that must be included in the plan. The intent of this requirement is for the plan to provide a synopsis of the scope of the monitoring program so the program can be assessed as part of the plan. The details and annual variation of the monitoring program are outside of the plan and may not require plan amendment per part 8410.0140, subpart 1a, item F of the rule amendment. Changes from a recommendation to a requirement the submittal of collected data to the appropriate state agency annually in order to maximize the value of public funds expended on monitoring.

**Subpart 6. Regulatory program.** This subpart replaces existing rule part 8410.0100, subpart 2 and includes requirements from part 8410.0130, subparts 1, 2, 3, and 5 of the existing rule. The subpart was reorganized consistent with other reorganization within the rule, placing the overarching requirements for the regulatory program in the first paragraph

followed by individual elements in the items following. Change allows for an organization's rules in place at the time of plan approval to substitute for this subpart being included in the plan because the rules may establish the requirements for a regulatory program. The rule amendment changes the existing rule to improve the regulatory interplay of an organization and the local government units within the organizational boundaries to reduce overlap, duplication and confusion by coordinating implementation of organization controls with local controls, defining the enforcement process for violations of organization controls, and assessing existing controls to address redundancies or deficiencies. Change does not require a plan to identify the local government procedures for enforcement; only those of the organization.

**A.** Replaces the wetland regulation requirements of existing rule part 8410.0100, subpart 2, item A. The Wetland Conservation Act became effective in January, 1992 and the existing rule was promulgated in May, 1992. At the time the existing rule was developed the functioning of the Wetland Conservation Act was unknown. Changes to this item are based on twenty years of experience since inception of the Wetland Conservation Act. Many of the requirements of the existing rule are obsolete.

**B.** Replaces the requirements of existing rule parts 8410.0100, subpart 2, item B, 8410.0100, subpart 3, and a portion of part 8410.0130, subpart 1 by shifting the emphasis from controls or programs to reduce erosion and sedimentation to standards or controls for sufficient stormwater runoff management to achieve goals established under part 8410.0080. This change recognizes the United States Environmental Protection Agency National Pollutant Discharge Elimination System permit program requirements.

**C.** Item C of the existing rule removed because the requirement is now covered by the United States Environmental Protection Agency National Pollutant Discharge Elimination System permit program requirements. Replaces the requirements of 8410.0100, subpart 2, item D of the existing rule. Removes the requirements for assessing local government adoption of shoreland and floodplain ordinances because this has already been addressed in plans since the existing rule requires it. Streamlines the language for flooding impacts by moving the specifics for assessing controls to the first paragraph of this subpart as part of the overarching assessment of the necessity of controls in achieving the goals of the plan.

**D.** Replaces existing rule part 8410.0100, subpart 6, last two sentences after item G; no other change.

**E.** Item incorporated into the initial paragraph of subpart 6. Change to require an organization to notify the land use authority of adverse land uses instead of determining adverse land uses to be public nuisances that require adoption of local controls to abate the nuisances because organizations may adopt controls to remedy those situations.

**Subpart 7. Incentive programs.** New subpart included to provide an outline for requirements for implementing an incentive program. Incentive programs have become

common practice for organizations since the existing rule was promulgated. The purpose for requiring this outline is to ensure consistency and transparency in incentive programs.

**Subpart 8. Waters restoration and protection program.** New subpart recognizes new programs since inception of the existing rule. This subpart provides clarification that organizations may be involved in the programs included in this subpart.

**Subpart 9. Trading programs.** New subpart to acknowledge the common practice of implementing environmental trading programs within organizations. It is a relatively new practice since the existing rule was promulgated.

**Subpart 10. Local water plans.**

**A.** Replaces part 8410.0110, subpart 3 of the existing rule. Adds that a local government unit may request the organization provide a list of changes needed in the local water plan to be compliant with the organization plan. Change allows and recognizes the local water plan may meet multiple purposes, which is currently in practice for some local government units.

**B.** Replaces the portions of existing rule parts 8410.0130, subpart 3 and 6 regarding local water plan programs and part 8410.0160 outlining the schedule for local water plan adoption by aligning the timeline for local water plans to be adopted with the local comprehensive plans rather than “within two years of the [B]board’s approval of the last organization plan that affects the local government.” This change was necessary to streamline the process for local water plans and recognizes that organizations are on variable timeframes for completing ten-year plan revisions. The next local comprehensive plan revisions are due in 2018, then 2028. Local water plan revisions would be required in 2017, then 2027 under the rule amendment. Three different scenarios were seriously considered by the Rule Advisory Committee. The Association of Metropolitan Municipalities distributed a short questionnaire to metropolitan municipalities on behalf of the Rule Advisory Committee to evaluate the three scenarios. Although there was widespread agreement that the existing process needed change, respondents were equally divided on their support of the three scenarios. The process chosen will provide good continuity between local water plans and local comprehensive plans by closely linking municipal land use and water resource planning, will reduce the number of times many cities have to revise their local water plans under the existing rule, will allow organizations to better coordinate subwatershed planning across municipal boundaries, and will resolve the contested issue as to local plan deadlines for cities lying within multiple organizations.

**8410.0110 IMPACT ON LOCAL GOVERNMENT**

Repealed. Incorporated into other parts of the rule amendment. The information under this part below simply maps to where the following subparts were moved.

**Subpart 1. Existing local controls.** Incorporated into part 8410.0045, subpart 4; see discussion there.

**Subpart 2. Financial impact on local government.** Incorporated into part 8410.0105, subpart 1, item A; see discussion there.

**Subpart 3. Adoption by reference.** Incorporated into part 8410.0105, subpart 10, item A; see discussion there.

#### **8410.0120 IMPLEMENTATION PRIORITIES**

Repealed. Incorporated into parts 8410.0045, subpart 1 and 8410.0105, subpart 1 of the rule amendment; see discussion there.

#### **8410.0130 IMPLEMENTATION COMPONENTS**

Repealed. Incorporated into part 8410.0105 of the rule amendment. The information under this part below simply maps to where in part 8410.0105 the following subparts were moved.

**Subpart 1. Controls.** Incorporated into part 8410.0105, subparts 1, 3 and 6; see discussion there.

**Subpart 2. Responsibilities.** Incorporated into parts 8410.0105, subpart 1, item B and 8410.0105, subpart 6; see discussion there.

**Subpart 3. Schedule.** Incorporated into part 8410.0105, subpart 1, items A and B, and part 8410.0105, subpart 6; see discussion there.

**Subpart 4. Capital improvement program.** Incorporated into part 8410.0105, subpart 2; see discussion there.

**Subpart 5. Enforcement.** Incorporated into part 8410.0105, subpart 1, item C and part 8410.0105, subpart 6, initial paragraph; see discussion there.

**Subpart 6. Administrative Process.** Incorporated into part 8410.0105, subpart 10, item B; see discussion there.

## **8410.0140 PLAN AMENDMENTS**

**Subpart 1. Amendment Section.** Change reformats the subpart into items for convenience to the reader and adds requirements as described in the items below.

**A.** Requires plans to have an amendment section as in existing rule part 8410.0140, subpart 1; however, change removes the word “interim” because the term is not necessary and adds “as defined in this part” for clarity.

**B.** Change clearly establishes the allowable duration of a plan as required by Minnesota Statutes, section 103B.231, subdivision 4, paragraph a.

**C.** New requirement to evaluate progress so that necessary changes can be identified early and systematically. See part 8410.0105, subpart 3, item E discussion.

**Subpart 1a. Changes not requiring an amendment.** New subpart intended to eliminate ambiguity in the existing rule and to decrease the time and expense associated with plan amendments by clearly outlining changes to a plan that can be completed without an amendment. Changes to a plan under this subpart do not alter the purposes or intent of the plan as written.

**Subpart 2. Amendment procedure.** Change for clarity and to streamline the amendment process, thus almost all amendments not objected to by the plan review authorities may follow the minor amendment process. BWSR will make a preliminary decision on whether a proposed amendment can follow the minor amendment process upon request by an organization before an organization begins the formal minor amendment process.

**A.** Text in existing rule item A moved to item D. New text was existing rule item C. Timeline for decision by BWSR is changed to 5 days after the comment period in B, or 35 days total; decreased from 45 days in the existing rule. Intent is to allow plan review agencies, counties and cities to file objections to amendments with BWSR during the comment period which BWSR would then consider in making a decision on whether the minor amendment process could be followed, and to shorten the time in which the decision is made so that amendments can proceed more rapidly.

**B.** Change incorporates terminology of plan review authorities, defined in part 8410.0010, subpart 16 of the rule amendment, for convenience to the reader with no change in the meaning, establishes a timeline for providing comments, and further outlines procedure for clarity. Change also includes that comments must be directed to BWSR in addition to the organization.

**C.** This is a new item in the rule providing the county with the ability to file an objection to an amendment and thus initiating the general amendment requirements. Most amendments pertain to projects. Because projects may require the provision of county funds pursuant to Minnesota Statutes, sections 103B.251 or 103D.901, a county’s position should be a deciding factor in determining if an amendment can be processed under the

minor amendment requirements instead of the general amendment requirements. Furthermore, this change is consistent with Minnesota Statutes, section 103B.231, subdivision 7, paragraph c regarding county approval of projects in a capital improvement program.

**D.** Formerly item A, text essentially unchanged.

**E.** Requirement added to give counties sufficient time to review and comment on the consistency of an amendment with a county groundwater plan pursuant to Minnesota Statutes, section 103B.231, subdivision 7, paragraph a. Note that a county groundwater plan is optional and presently most metro counties do not have a current groundwater plan.

**Subpart 3. Minor amendments to capital improvements.** Repealed. The same minor amendment procedures apply to all amendments as set forth in subpart 2. The Advisory Committee found no reason to have different minor amendment procedures for capital improvement projects, especially because most minor amendments involve projects.

**Subpart 4. Form of amendments.** Subpart reformatted to consolidate multiple items into one subpart and reorganized for convenience to the reader. Changes to text include specifying the subpart applies to both draft and final amendments and recognizing changing technologies by allowing for electronic formats if agreeable with the receiving entity.

**Subpart 5. Distribution of amendments.** Requirement suggesting distribution of draft proposed amendments removed because it is required in subpart 2, item B of both the existing rule and the rule amendment. Change to include requirement to post amendments to the organization's website to increase transparency.

## **8410.0150 ANNUAL REPORTING AND EVALUATION REQUIREMENTS**

**Subpart 1. Requirement for annual activity and audit reports.** Reformatted for clarity and distinction between activity and audit reports. Removes requirement for financial report because this report is incorporated into, and not distinct from, audit reports that meet the requirements of the Government Accounting Standards Board.

**A.** Change requires annual activity report be submitted 120 days from the end of the calendar year rather than an organization's fiscal year and clarifies the activity report is for the previous year's activities. Increases the deadline for submitting the audit report from 120 to 180 days for consistency with Minnesota Statutes, section 6.756, and includes a new requirement for audit report submittal when this statute is applicable. Change specifies audit report submission requirements when a county or city audit report contains the financial statements for an organization. Change explicitly requires the audit to be consistent with the requirements of the Government Accounting Standards Board.

**B.** Formerly existing rule subpart 1 paragraph, text essentially unchanged.

**Subpart 2.** Repealed. The requirements are covered in subpart 1, item A of the rule amendment requiring the audit to be consistent with the Government Accounting Standards Board requirements.

**Subpart 3. Content of annual activity report.**

**A.** Removed requirement to list advisory committee members, board vacancies, and board member contact information because most of that information, or alternative information, is required to be on an organization's website under the rule amendment.

**B.** Changed requirement from listing employee and consultant contact information to contact information for a person capable of answering questions. This is to remove unintended billing to the organization by consultants and recognize not all organizations have employees. Employee contact information, if any, is required to be on an organization's website under the rule amendment.

**C.** Changes requirement to report on discrete activities rather than goals and objectives because an annual work plan sets forth activities to be done throughout the year. Whether or not activities accomplish goals and objectives is a different matter that is addressed in an organization plan. Change to better connect these activities directly to the budget for improved transparency if not done in the annual audit report.

**D.** Change to include budget with planned activities for improved accountability. Clarified the year the work plan is for. Changed requirement from goals and objectives to planned activities because that is what is commonly done, it is better for an annual work plan to propose activities that will make progress towards achieving the goals set forth under part 8410.0080, and the new requirement in item E requires evaluation of progress on goals.

**E.** Change moved existing requirements to items J and K and includes new requirement for biannual evaluation of progress towards achieving goals, recognizing the value of assessment to identify lack of progress early and systematically in understanding adjustments necessary to achieve the goals established under part 8410.0080.

**F.** Change emphasizes reporting of trends in water quality data collected by an organization instead of reporting a summary of the data because trend information is more useful to an organization, more meaningful to stakeholders, and for conducting the new evaluation required in item E.

**G.** Change moved requirement for evaluation of local water plan status to item I. New item G was existing rule item H, changed to reflect changes in part 8410.0105, subpart 4 of the rule amendment.

**H.** Renumbered from I to H; no other change.

**I.** Renumbered from G to I. Change to reflect changes in part 8410.0105, subpart 1, items B and C of the rule amendment.

**J.** Changed to remove existing rule item J because requirements included in subpart 1, item A, subitem 2 and in subpart 3, item C of the rule amendment. New item J includes from existing rule item E locally adopted ordinances or rules required by an organization and their enforcement.

**K.** Changed to remove existing rule item K because there are no local wetland banking programs and none are foreseen due to the State Wetland Bank under the Wetland Conservation Act. New item K includes from existing rule item E; a summary of permits and variances issued or denied and violations.

**Subpart 3a. Watershed management organization websites.** New requirement requiring organizations to have websites and outlining content requirements of the websites for increased transparency, accountability and modern accessibility. All, or almost all, organizations currently have websites, however the content is variable. Minimum content requirements will result in consistency.

**Subpart 4. Procedure for state audit.**

**A.** No change.

**B.** Change adds plan review agencies to required notification and opportunity to comment for complaints requesting an audit prior to BWSR determining if there is a basis for a complaint.

**C.** Change moves opportunity allowing organization to be heard regarding a complaint against them to the BWSR Dispute Resolution Committee rather than the full BWSR Board consistent with Minnesota Statutes section 103B.101, subdivision 10.

**D.** Change requires the organization to bear the cost of state financial and performance audits.

**8410.0160 PLAN STRUCTURE**

Changes incorporate parts 8410.0160 and 8410.0170 of the existing rule into one part, reformats the two existing parts, and streamlines much of the existing language thereby giving local governments more flexibility in developing local water plans to be part of their local comprehensive plans. Part 8410.0160 of the existing rule now included in subparts 1 and 2. Part 8410.0170 of the existing rule now included in subparts 3 through 6.

**Subpart 1. Requirement.** Changes for clarity and updated reference. Change removes the requirement for a table of contents.

**Subpart 2. Local comprehensive plan.** Change requiring, instead of considering, the local water plan be incorporated as a chapter in the local comprehensive plan, and requiring consistency between the local water pan and the comprehensive plan. The timing for adoption of local water plans removed as it is now included in subpart 6 and part 8410.0105, subpart 10, item B of the rule amendment; see discussion there.

**Subpart 3. Plan contents.** Part 8410.0170, subpart 1 removed due to overlap with the executive summary. Part 8410.0170, subpart 5 removed to streamline the local water plan development process. Because the local water plan goals and policies required under the existing rule had to be consistent with the goals and policies of the organization plan, many local water plans merely recited the organization plan goals and policies. Also, because local water plans must be consistent with organization plans, better local water plans will result by focusing on assessing problems, setting priorities and developing an implementation program than burdening the process with developing goals and policies.

- A. Renumbered from part 8410.0170, subpart 3; language streamlined.
- B. Renumbered from part 8410.0170, subpart 2; language streamlined and clarified.
- C. Renumbered from part 8410.0170, subpart 4 and changed to emphasize landuse and drainage patterns.
- D. Renumbered from part 8410.0170, subpart 6; references updated and language streamlined.
- E. Renumbered from part 8410.0170, subparts 7, 8, 9 and 10; language streamlined and subparts reformatted. Change replaced subpart 8 with the requirements of part 8410.0045, subpart 1, item A; and part 8410.0160, subpart 3, item E, subitems 5 and 6 of the rule amendment that require funding sources be identified. Change added certain requirements from Minnesota Statutes, section 103.235, subdivision 2, paragraph a that are not in the existing rule. Change added new requirement for a table for implementation program components and for capital improvement program projects, similar to part 8410.0105, subpart 1, item A and part 8410.0105, subpart 2 of the rule amendment. See discussion there.

**Subpart 4. Amendment Procedures.** Renumbered from 8410.0170, subpart 11. Change removed requirement for the year the local water plan extends to because the year is now set by subpart 6 and part 8410.0105, subpart 10, item b of the rule amendment. Change removed requirement to specify the process for amendments as overly prescriptive due to retention of requirement for amendment process to follow the amendment procedure specified in the organization plan. Change removed requirement to forward local water plans to an organization because amendment procedures in an organization plan require it

and an organization cannot approve a local water plan amendment without the amendment being forwarded to an organization.

**Subpart 5. Submittal and Review.** Renumbered from 8410.0170, subpart 12, unchanged except requirement to notify moved to subpart 6 of the rule amendment.

**Subpart 6. Adoption and Implementation.** New subpart incorporating procedures from the renumbered part 8410.0170, subpart 12. Change aligns the local water plan adoption schedule with the local comprehensive plan schedule rather than with the organization plan schedule. See part 8410.01015, subpart 10, item B discussion. Change added following Minnesota Statutes, section 103B.235, subdivision 4 requirements for adoption and implementation of local water plans.

**8410.0170.** Repealed. See part 8410.0160 discussion.

## **8410.0180 DETERMINATIONS OF FAILURE TO IMPLEMENT**

Changes to align process with the appeal process of the Wetland Conservation Act, Minnesota Rules part 8420.0905.

**Subpart 1. Applicability.** No change.

**Subpart 2. Petition.** Change in terminology of “written complaint” to “petition”. Change narrows the standard for submittal of a petition to 50 residents with land in the organization. No change to submittal of a petition by plan review agencies, local government units, or BWSR staff.

**Subpart 3. Petition Review Process.**

**A.** Change incorporates a process for gathering input on a petition from the plan review agencies that is not in the existing rule. Change clarifies criteria for establishing just cause, and clarifies the decision-making process for establishing just cause. Change in terminology of “investigation” to “assessment”.

**B.** Change to better define the contents of a report and outlines and provides clarity to the process for further discussion of the report, including the requirement for a meeting with stakeholders. Change adds distribution of the report to include the plan review agencies and local governments.

**C.** Change to provide additional time, from 30 days to 60 days, for the organization to hold a public hearing instead of the existing requirement to hold a public

meeting. Change requires public hearing and formal response regardless of the joint powers agreement.

**D.** Appeal process moved to Subpart 5. See discussion there.

**E.** Board involvement and decision moved to subparts 3a and 4. See discussion there.

**Subpart 3a. Criteria and standards for determinations.** Change incorporates the Board involvement and decision process in the existing rule subpart 3, item E, and clarifies the standard of review by providing criteria and standards for determinations, including reference to Minnesota Statutes, section 103B.102, evaluation of an organization's performance.

**Subpart 4. Determinations.**

**A.** Change incorporates review of the information in the existing rule subpart 3, item E. Change with the addition of subpart 3a in the rule amendment for a clear standard of review in Board determinations. Subitem (3) Change adds a new option giving the organization an opportunity to come into compliance via a plan amendment. Subitem (4) Change adds BWSR staff, in addition to the existing rule including the Dispute Resolution Committee, to attempt to resolve the matter. Subitem (5) Change clarifies the requirements for the findings of fact.

**B.** Change adds clarification of notification to stakeholders of the determination of the Board.

**C.** Formerly existing rule item B. Change for renumbering consistent with the rule amendment. Change in terminology of "prerogatives" to "responsibilities". Language regarding the duties and responsibilities of the BWSR Dispute Resolution Committee in existing rule item C repealed because the duties and responsibilities of the Dispute Resolution Committee are set forth in its bylaws required by Minnesota Statutes, section 103B.101, subdivision 10.

**Subpart 5. Appeal of determinations or decisions.** New subpart that clarifies and expands appeal procedures in the existing rule subpart 3, item D.

**A.** Change requires subpart 3, item A or subpart 4 of the rule amendment be completed prior to appeals being allowed to prevent frivolous appeals, appeals that are not ripe, and to allow for efforts to resolve the matter.

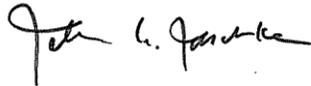
**B.** Addition provides procedures and timelines for appeal if just cause for failure to implement is not found in subpart 3, item A of the rule amendment.

C. Change outlines the process for the Board and the Dispute Resolution Committee considering appeals and making decisions. Change clarifies the appeal route of a Board decision.

**Subpart 6. Determination necessary for watershed district termination.** Change adds clarification of the rule and Minnesota Statutes, section 103B.221.

## VI. CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.



Dated: July 8, 2014

John Jaschke  
Executive Director  
Minnesota Board of Water and Soil Resources