

OKABENA-OCHEDA WATERSHED DISTRICT
RULES AND REGULATIONS
May 4, 2010

Section 1: Introduction.

- 1.1 *Authority.* The Okabena-Ocheda Watershed District was established by Order of the Minnesota Water Resources Board on February 28, 1961.
- 1.2 *Statutory Policy and Rulemaking Authority.* Under Chapter 103D of Minnesota Statutes, it is the policy of the State of Minnesota to authorize the establishment of watershed districts “. . . to conserve the natural resources of the State by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and general welfare and the provident use of the natural resources”. The legislature has granted express statutory authority to watershed districts to adopt rules to accomplish the purposes of Minnesota Statutes, Chapter 103D, and to implement the powers of the managers.
- 1.3 *Watershed Regulatory Policy Statement.* The goal of regulation is to provide for the initiation, implementation and enforcement of a comprehensive and uniform system of rules and regulations protecting water quality and managing, conserving and controlling the use of water within the watershed district. In order to continue to develop and implement the watershed district’s overall plan, it is desirable and beneficial to manage landuse, construction activities, and control private and public drainage activities affecting water flow between private landowners and/or impacting public drainage systems within the district. Regulation of private and public drainage activities is also desirable and beneficial as a means of data acquisition and record-keeping of all drainage systems within the district as such records assist, aid and facilitate the determination of impact, influence and effect that such private activities have upon public drainage systems and the watershed as a whole. For purposes of these rules, the term “*regulate*” shall be defined as imposing such restraints upon the private rights of landowners to improve their property through drainage activities as are necessary for the general welfare.
- 1.4 *Jurisdiction and Applicability of Rules.* These rules shall apply to and include all of the area, incorporated and unincorporated, including both land and water, within the territory of the Okabena-Ocheda Watershed District. These rules shall have the force and effect of law.
- 1.5 *Inconsistent Provisions.* If any rule or regulation herein contained is inconsistent with the provisions of the water law of the State of Minnesota, or other applicable state or federal law, then such state or federal law shall govern and the rule or regulation shall be deemed null and void. Any inconsistency of a rule or regulation with a state or federal law will not and shall not be deemed to affect the validity of any other rule or regulation.
- 1.6 *Scope.* It is not intended that these rules shall repeal, abrogate, annul, or in any way impair or otherwise interfere with the existing provisions of other laws.
- 1.7 *Severability.* These rules and regulations are intended to be severable and in the event that any rule or regulation herein contained is held to be invalid, the remaining rules and

regulations shall be deemed to be in full force and effect as if there had been an expungement of the invalid provisions.

- 1.8 *Due Process.* These rules and regulations are intended to provide all affected persons and entities with due process of law.

Section 2: Adoption of Existing Laws, Rules, and Regulations.

2.1 *Adoption of Water Law.* The Board of Managers expressly adopts by reference all of the water law of the State of Minnesota. The Board of Managers reserves the right to impose rules and regulations that are more restrictive than the laws contained within the water law of the State of Minnesota.

2.2 *Other Rules, Regulations, or Provisions.* The Board of Managers expressly adopts by reference the rules, regulations, and provisions of the following agencies and statutes to the extent that such rules, regulations, and provisions apply to activities regulated by these rules: Minnesota Board of Water and Soil Resources (BWSR); Minnesota Department of Health (MDH); Minnesota Pollution Control Agency (MPCA); Minnesota Department of Natural Resources (MDNR); Minnesota Environmental Quality Board (EQB); U.S. Department of Agriculture (USDA); U.S. Environmental Protection Agency (EPA); U.S. Army Corps of Engineers (ACOE); Nobles Soil and Water Conservation District (SWCD); Nobles County; Local governmental units, including municipalities and townships; Minnesota Environmental Rights Law, MS Chapter 116B, as amended; State Environmental Policy, MS Chapter 116D, as amended; Minnesota Wetland Conservation Act of 1991, as amended. Where more than one rule, regulation, or provision applies, the most restrictive rule, regulation, or provision shall pertain.

Section 3: Definitions. For purposes of these rules, certain words and terms are defined herein. In absence of a definition for a word or term in these rules, the definition established by statute or case law of the State of Minnesota shall apply unless clearly in conflict, inapplicable, or absurd.

3.1 *Agricultural Land:* means land used for horticultural, row, close grown, pasture, and hay land crops; growing nursery stocks; animal feedlots; farm yards; associated building sites; and public and private drainage systems and field roads located on any of the foregoing. (MS 103G.005, Subd. 2a)

3.2 *Best Management Practices (BMPs):* means practices, techniques, and measures that prevent or reduce water pollution from nonpoint sources and which will minimize erosion of soil and deposition of sediment in private or public drainage systems or waters by using the most effective and practicable means of achieving water quality and runoff goals. BMPs include, but are not limited to, structural controls, nonstructural controls, operational procedures, and maintenance procedures. The BMPs approved by MPCA in its handbook “Protecting Water Quality in Urban Areas” satisfy the requirement for BMPs under these rules.

3.3 *Board of Managers, Board, or District:* means the Board of Managers of the Okabena-Ocheda Watershed District.

- 3.4 *General Welfare:* means any act or anything tending to improve or benefit or contribute to the safety or well being of the general public or benefit the inhabitants of the watershed district. General welfare shall be synonymous with “public welfare” or “public benefit”.
- 3.5 *Impervious Surface:* means a constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities or at an increased rate of flow than prior to development. Examples include, but are not limited to, rooftops, sidewalks, patios, storage areas, roads, streets, driveways, parking lots, or other structural improvements utilizing concrete, asphalt, or compacted soils.
- 3.6 *Shore Impact Zone:* means land located between the ordinary high water level of a public water and a line parallel to and one half (½) the distance of the required setback for structures from the ordinary high water mark of the public water; except that on property used for agricultural purposes, the shore impact zone means that land located between the ordinary high water level of a public water and a line parallel to and fifty feet (50’) from the ordinary high water mark of the public water.
- 3.7 *Stormwater Management:* means the regulation of the quantity (rate control) and quality of stormwater entering lakes, rivers, streams, or public drainage systems in order to ensure that all nonpoint source pollution, erosion, and sedimentation is minimized.
- 3.8 *Terrace:* means an earthen embankment, a channel, or a combination ridge and channel constructed across the existing slope of the land.
- 3.9 *Water Quality Management:* means the monitoring and control of the quality of the water directly affected by a drainage activity, as well as the receiving waters of a drainage activity, to ensure that minimal degradation in surface or ground water quality occurs.
- 3.10 *Waterway:* means a natural or constructed channel, with a permanent grass or vegetative cover, that is shaped or graded to engineered dimensions, and is established for the stable conveyance of runoff.
- 3.11 *Project:* means any construction activity that includes clearing, grading, or excavation. Projects cannot be phased to avoid the permit requirements.

Section 4: Regulation of Activities.

The following activities shall require a permit from the Board of Managers of the Okabena-Ocheda Watershed District prior to initiation of the activity.

- 4.1 Work in any watercourse or water basin, whether or not water is present at the time of work; including but not limited to excavation, filling, dredging and the placement of structures of any type.
- 4.2 Work in the right of way of any public drainage system.
- 4.3 Withdrawal of ground or surface water at a rate greater than 50 gallons per minute or installation of an irrigation project serving an area over 1 acre.

- 4.4 Installation of new surface tile intakes and catch basins, including those draining new or existing impervious surfaces.
- 4.5 Construction or improvement of any agricultural drainage tile system that includes a surface intake or other device that may allow unfiltered surface water to enter the subsurface drainage system.
- 4.6 Construction of an open ditch drainage system or dike.
- 4.7 Construction activities that may drain or fill wetlands as defined by the 1987 Corps of Engineers Wetland Delineation Manual
- 4.8 Operation or alteration of any water control structure in any watercourse or water basin.
- 4.9 Diversion of water into a different sub-watershed or into a public drainage system from land not assessed for the system.
- 4.10 Installation of riprap on lake shore or stream banks.
- 4.11 Installation of new storm sewers, culverts or bridges, or replacement of existing storm sewers culverts or bridges with structures having a greater flow capacity.
- 4.12 Installation of agricultural best management practices that require land alteration including surface tile intakes, terraces, waterways, and diversions that have not been designed by the Natural Resources Conservation Service or Soil and Water Conservation District.
- 4.13 Grading or fill placement within the shore impact zone.
- 4.14 Disposal of snow within the shore impact zone or on impervious surfaces that drain directly or indirectly through storm water disposal systems to lakes, streams, ditches or wetlands.
- 4.15 Construction activity including clearing, grading and excavation that disturbs one or more acres of land. These projects require the owner to obtain a National Pollutant Discharge Elimination System/State Disposal System permit. District rules regulating these projects and the permit process therefore are located in **Appendix A** to these rules.
- 4.16 Earth moving projects involving more than 200 cubic yards of excavation or fill; or which disturbs more than 10,000 square feet of soil, and which project, or any part thereof, is located:
 - within 300 feet of a stream, storm sewer catch basin, drainage tile intake or a wetland, or
 - within 1,000 feet of a lake.District rules regulating earth moving projects and the permit process therefore are located in **Appendix B** to these rules.

- 4.17 Any other act that, as judged by the Managers, may have a significant impact on the Districts water resources.

The following activities shall be prohibited in the Okabena-Ocheda Watershed District.

- 4.18 Disposal of anything other than water in a public or private drainage systems and road right-of ways.
- 4.19 Planting, cultivating or harvesting agricultural crops, other than grass hay, closer than 16.5 feet from a tile intake, the top of a public or private ditch bank, or the top of a stream course bank.
- 4.20 Planting, cultivating or harvesting agricultural crops, other than grass hay, closer than 50 feet from a lakeshore or the shoreline of a municipal reservoir.
- 4.21 Planting, cultivating or harvesting agricultural crops, other than grass hay, in public road right-of-ways.
- 4.22 Constructing drainage systems, or installing tile or ditch outlets, in public road right-of ways without written permission from the road authority.
- 4.23 Replacement of culverts under public roads or private driveways, with culverts or bridges with greater or lesser flow capacity, unless required for a conservation practice project meeting Natural Resources Conservation Services standards and specifications, or required for a project designed by a licensed engineer for flood water storage, or required for a project designed by a licensed engineer to comply with state standards and specifications for protection of existing structures or public safety.

Section 5: Permit Application Process: A request for permit or other approval of an activity under these rules shall be commenced by delivering, either in person or by U.S. Mail, a signed application on the form required by the Board of Managers to the office of the Okabena-Ocheda Watershed District, 960 Diagonal Road, P.O. 114, Worthington, MN 56187.

- 5.1 *Permit Fees:* A \$10.00 application fee and a \$40.00 inspection fee shall be charged for each storm water permit. A \$10 application fee and a \$15.00 inspection fee shall be charged for each erosion control plan permit. Application fees are waived for public entities. Design information must be submitted with the application. After-the-fact permits will be subject to the application fee and all other costs incurred by the District. If, in the opinion of the Board of Managers, it is necessary for the watershed district engineer or other consultant to review the application and all exhibits, view the site, and make a report to the watershed district as to the technical implications of the work, costs incurred by the watershed district during this review shall be borne by the applicant.
- 5.2 *Project Plan:* A plan, design, or map of the proposed activity shall be attached to the application form. Such plan, design, or map shall be drawn and shall clearly and accurately show all work to be performed, and shall include, either within the plan, design, or map, or by attachment, the following information at a minimum.

- 5.2.1 *Construction Plan.* At the request of the Board of Managers, the plan, design, or map must show the materials to be used, the proposed duration of the activity and/or construction involving the activity, and the proposed initiation and completion dates.
- 5.2.2 *Stormwater and Water Quality Management.* The plan, design, or map must separately address the issues of, and make provisions for, stormwater management and water quality management both during construction and post-construction activities.
- 5.2.2.1 Stormwater management and water quality management may include structural water management measures (retention areas, swales, infiltration trenches, filter strips, detention basins, vegetative buffer zones, etc.) or nonstructural water management measures (temporary erosion and sedimentation controls, fertilizer and pesticide application controls, solid waste collection, phosphorous abatement and control, etc.) or a combination of both types of management measures.
- 5.2.2.2 Stormwater management and water quality management plans shall include a maintenance plan for all structural and nonstructural controls included within the plan, to include: the party responsible for maintenance, a maintenance schedule, and procedures to be followed if maintenance is not performed or is inadequately performed.
- 5.2.3 *Sewage or Waste.* The plan, design, or map must be accompanied by or contain a statement as to whether the drainage activity involves the installation, abandonment, or removal of a sewage or waste disposal system.
- 5.2.4 *Livestock.* The plan, design, or map must be accompanied by or contain a statement as to whether livestock will be watered, fed, pastured, or held upon or around the proposed drainage activity. If livestock are involved with the proposed drainage activity, the Board of Managers may require the requestor to devise a livestock management plan that minimizes the adverse impact upon the proposed drainage activity.
- 5.2.5 *Design, Material Standards.* The plan, design, or map must be accompanied by or contain a statement that all culvert and tile emplacement, construction, design, and materials shall conform, at a minimum, to the standards of the NRCS.
- 5.3 *SWCD and NRCS Checkoff.* All applications must be reviewed by the Nobles Soil and Water Conservation District (SWCD) and/or the Natural Resources Conservation Service (NRCS) to advise the District about whether the proposed activity is in compliance with Wetland Conservation Act rules or Swampbuster provisions of the federal farm program.
- 5.4 *Easement/Access.* All permits and other approvals will contain a grant of easement and/or right of access to the watershed district, its Board of Managers, employees, agents, and assigns, for purposes of inspection and monitoring of the drainage or construction activity.

- 5.5 *Completion Time.* Unless otherwise stated on the permit or other approval, the drainage or construction activity involved shall be completed within two years or an extension must be requested and approved by the Board of Managers. The Board of Managers shall be notified upon completion of the activity by the permittee or holder of other approval of the Board.
- 5.6 *Additional Information.* After initial review of the request, the Board of Managers may require that the applicant provide such additional information as deemed necessary to evaluate the proposed drainage or construction activity in accordance with the required considerations.
- 5.7 *Best Management Practices.* All permitted activities shall incorporate best management practices (BMPs). It is the goal of these rules to ensure that the degree of water quality improvement and runoff protection is maximized relative to the cost of implementing the BMPs.
- 5.8 *Restoration.* Exposed and/or disturbed soil shall be restored to a condition equivalent to or better than that which existed prior to the construction or drainage activity.
- 5.9 *Spoils.* All spoils will be leveled and shall be seeded to prevent erosion.
- 5.10 *Discharge.* Wherever feasible, water from drainage activities will be discharged through retention basins, or other diffusing structures.
- 5.12 *Upstream Storage.* Wherever feasible, drainage or construction activities will include use of temporary storage areas, retention basins, or other similar structures to maximize upstream storage and reduce peak flows, erosion damage, and sedimentation.
- 5.13 *Filter Strips.* Unless otherwise noted in the permit or other approval of a drainage activity, all tile intake and catch basin permits include a requirement for a grass filter strip possessing a radius of 16.5 feet surrounding such device.
- 5.14 *Shoulder and Bank Protection.* All water inlets, culvert openings, and bridge approaches shall have adequate shoulder and bank protection in order to minimize land and soil erosion. Adequate shoulder and bank protection shall include by way of example and not by way of limitation: permanent grass or other ground cover, mulch, sod, riprap, retaining walls, and terraces.
- 5.15 *Slopes.* Each landowner shall be required to apply BMPs to minimize soil erosion and sedimentation from all construction or drainage activities. At a minimum, the following rules shall apply:
- 5.15.1 All ditch, watercourse, shore land, and water basin slopes shall be constructed with a side slope as determined by customary engineering practices so as to reasonably minimize land and soil erosion.
- 5.15.2 All determinations as to whether a side slope reasonably minimizes land and soil erosion shall include the intended capacity of the watercourse or other water body; the depth, width, and elevation; and the character of the soils involved.

- 5.15.3 Exposed or disturbed soil on slopes or topographic contours of any drainage activity, above the low water mark, shall be mulched, sodded, and/or seeded to hinder erosion and maintained until stabilized by establishment of permanent grass or other approved ground cover.
- 5.16 *Riprap*. Riprap may not be installed more than five feet waterward of the ordinary high water mark and must conform to the natural alignment of the shore or waterway and not obstruct the flow of water.
- 5.17 *No Estoppel*. The issuance of a permit or other approval for drainage activity under these rules shall not constitute an estoppel or limitation of any claim or right of action of the watershed district against the applicant, its contractors, agents, or employees for violation of or failure to comply with the provisions, conditions, or limitations of the permit or other approval granted by the Board of Managers or other applicable provisions of the law.
- 5.18 *Changes to Activity, Plan, or Design*. Any new development, redevelopment, addition, change, or modification of an existing drainage activity, or a proposed drainage activity previously approved by the Board of Managers shall require review and re-approval by the Board of Managers under these rules. The Board of Managers may waive the application fee if the requestor has previously paid an application fee within the last two years.
- 5.19 *Termination, Cancellation, and Revocation*. A permit or other approval of a drainage or construction activity may be terminated, canceled, or revoked as provided by this section. Such termination, cancellation, or revocation shall be with or without notice, provided that where no notice is given, the applicant shall possess the right to appeal said action to the Board of Managers by written request delivered within 30 days of the action to the office of the Okabena-Ocheda Watershed District.
- 5.19.1 Termination shall mean the permit or other approval expired by its own terms or that the drainage activity involved has been completed and approved by the Board of Managers, thereby terminating the permit.
- 5.19.2 Cancellation shall mean the permit or other approval was suspended, either temporarily or permanently, in whole or in part, upon a determination that such cancellation is deemed necessary to protect the public welfare.
- 5.19.3 Revocation shall mean the permit or other approval was withdrawn after issuance by the Board of Managers based upon an alleged violation of any of the provisions, conditions, or limitations contained in the permit, license, or other approval granted by the Board of Managers, or for failure to obtain other necessary approvals from, or comply with the requirements of an authority other than the Board of Managers.
- 5.20 *Limited Approval Only*. Obtaining a permit or other approval for drainage or construction activities under these rules shall not constitute absolute authority to perform the drainage activity. The applicant remains responsible for obtaining any other required

authorization. The permit or other authority is permissive only and shall not release the applicant from any liability nor obligation imposed by Minnesota law, Federal law, or local ordinances and shall be subject to all conditions and limitations imposed by the Board of Managers or hereafter imposed by applicable law. The Board of Managers, by approving a request for permit or other approval of a drainage activity, makes no representations to the applicant that the proposed drainage activity complies or does not comply with existing law. No liability shall be imposed upon or incurred by the watershed district, its Board of Managers, or its officers, agents, and employees, officially or personally, on account of the granting of the permit or other approval, or on account of any damage to any person or property resulting from any act or omission of the applicant or any of its contractors, agents, or employees relating to the drainage activity.

Section 6: Project Notification for Subsurface Tile Drainage Activities: Before initiation of an agricultural drainage project, the landowner must obtain a permit, or file a completed *Subsurface Tile Drainage Project Notification Form*. Permits are required for tile drainage projects that include the installation of new surface intakes, catch basins or other devices that may allow unfiltered surface water to enter the subsurface drainage system. Permits are also required for any project that may drain or fill wetlands as defined by the 1987 Corps of Engineers Wetland Delineation Manual. Other agricultural tiling projects may be initiated by the landowner after a completed *Subsurface Tile Drainage Project Notification Form* is filed with the District. Landowners must mail or deliver the completed notification form to the Okabena-Ocheda Watershed District, 960 Diagonal Road, P.O. Box 114, Worthington, MN 56187 at least 10 days before construction begins.

Section 7: Variances: The Watershed District Board of Managers may hear requests for variances from the literal provisions of these rules in instances where their strict enforcement would cause undue hardship because of circumstances unique to the property under consideration. The Board of Managers may grant variances where it is demonstrated that such action will be in keeping with the spirit and intent of these rules.

7.1 The Board of Managers may grant variances only where it is demonstrated that such action will be consistent with the district's watershed management plan and Minnesota water law generally.

7.2 In order to grant a variance, the Board of Managers shall determine that the special conditions that apply to the structure or land in question do not apply generally to other land or structures in the District, that the granting of the variance will not merely serve as a convenience to the applicant, and that the variance will not impair or be contrary to the intent of these rules. A hardship cannot be created by the landowner, the landowner's agent or representative, or a contractor, and must be unique to the property. Economic hardship alone is not grounds for issuing a variance. Land platted within a municipality that has storm water infrastructure installed before the adoption date of these rules, shall be eligible for a variance. The term "*undue hardship*" as used in connection with the granting of a variance shall mean that the property under consideration cannot be put into a reasonable use if these rules were strictly applied and enforced

7.3 A variance shall become void after one year after it is granted if not used.

7.4 A violation of any condition set forth in a variance shall be a violation of the District rules and shall automatically terminate the variance.

Section 8: Restrictions and Limitations upon Board Action.

8.1 *Time deadline for action.* The Board of Managers will approve or deny within 60 days a written request for a permit or other governmental approval of drainage activity under these rules. Failure of the Board of Managers to deny a request within 60 days is approval of the request. If the Board of Managers denies the request, it must state in writing the reasons for the denial at the time that the request is denied. If the watershed district receives a written request that does not contain all required or necessary information, the 60-day limit starts over only if the watershed sends written notice to the requestor within ten business days of the initial consideration of the request by the Board of Managers telling the requestor what information is missing.

8.1.1 The watershed district's response meets the 60-day limit if the watershed district can document that its written approval or denial action was sent within 60 days of receipt of the written request as defined above.

8.1.2. The time limit in subdivision 8.1 is extended if a state statute, federal law, or court order requires a process to occur before the Board of Managers acts on the request, and the time periods prescribed in the state statute, federal law, or court order make it impossible to act on the request within 60 days. In cases described in this paragraph, the deadline is extended to 60 days after completion of the last process required in the applicable statute, law, or order.

8.1.3. The time limit in subdivision 8.1 is extended if a request submitted to the watershed district requires prior approval of another local, state, or federal agency or board. For purposes of this provision, another local, state, or federal agency or board includes the following: a city, county, town, school district, metropolitan, or regional entity, or other political subdivision. In cases described in this paragraph, the deadline for watershed district action is extended to 60 days after the required prior approval is granted.

8.1.4 The Board of Managers may extend the time limit in subdivision 8.1 before the end of the initial 60-day period to protect against serious or significant harm to the public health, safety, or welfare by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length. A decision by the Board of Managers to require an engineering report, environmental impact assessment, or similar preliminary evaluation of a request submitted to the watershed district shall be deemed an act to protect against serious or significant harm to the public health, safety, or welfare.

8.2 *Required Considerations.* The following criteria shall be considered by the Board of Managers in approving or denying a written request for a permit or other approval of a proposed activity under these rules.

8.2.1 The private or public benefits and costs of the proposed activity.

- 8.2.2 The present and anticipated agricultural land acreage availability and use affected by the proposed activity.
- 8.2.3 The present and anticipated land use affected by the proposed activity.
- 8.2.4 The flooding characteristics of property affected by the proposed activity and the anticipated impact or effect upon said flooding characteristics of the proposed activity.
- 8.2.5 The waters to be drained and availability of alternative measures to conserve, allocate, and use the waters – including the potential for storage and retention of such waters.
- 8.2.6 The anticipated effect of the proposed activity upon water quality.
- 8.2.7 The anticipated effect of the proposed activity upon fish and wildlife resources.
- 8.2.8 The anticipated effect of the proposed activity upon shallow ground water availability, distribution, and use.
- 8.2.9 The overall environmental impact of the proposed activity.
- 8.2.10 The adequacy and non-erodability of the outlet for the proposed activity.
- 8.2.11 The need and reasonableness of the proposed activity.
- 8.2.12 The anticipated injury or damage to adjoining or downstream property from the proposed activity and potential alternatives avoiding/reducing such injury and damage.
- 8.2.13 Whether the benefits of the proposed activity outweigh the anticipated harm.
- 8.2.14 Whether the proposed activity is consistent with the “*general welfare*”. In determining the general welfare, the Board of Managers will consider both agricultural best management practices and water quality best management practices.
- 8.2.15 Whether the proposed activity is consistent with city, county and state shoreland and floodplain ordinances.
- 8.2.16 Whether, under all the circumstances, the proposed activity constitutes a reasonable use of the land and resources involved. For purposes of these rules, the term “*reasonable use*” shall be interpreted to incorporate the doctrine of reasonable use; i.e., in affecting a reasonable use for a legitimate purpose a landowner, acting in good faith, may drain his land of surface waters and cast them as a burden upon the land of another, although such drainage carries with it some waters which would otherwise have never gone that way, if there is a reasonable necessity for such drainage; and if reasonable care be taken to avoid unnecessary injury to the land receiving the burden; and if the utility or benefit accruing to the land drained reasonably outweighs the gravity of the harm resulting to the land receiving the burden; and if, where

practicable it is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or if, in the absence of a practicable natural drain, a reasonable and feasible artificial drainage system is adopted.

8.3 *Reservation of Right to Require Preliminary Analysis.* The Board of Managers reserves the right, when in the Board's considered opinion, such action is deemed to be in the public's welfare, to require that any person or entity requesting a permit or other approval of a drainage activity under these rules, procure and pay for an engineering study, environmental impact assessment, or other preliminary analysis determined by the Board of Managers to be beneficial and reasonably necessary to the Board's consideration, evaluation, and determination of the request.

Section 9: Other Regulation of Activities Affecting Drainage. The Board of Managers may enter into or issue letters of understanding, consent agreements, stipulations, orders, or other forms of approval for activities affecting drainage which do not require a permit under these rules. In all such cases, approvals will be entered into or issued upon majority approval by the Board of Managers after notice and hearing at a regular, special, or emergency meeting.

Section 10: Effect on Other Drainage Law.

10.1 *No Effect.* These rules and regulations shall not be deemed to have any impact, influence, nor effect upon the requirements for drainage projects regulated and controlled by Minnesota Statutes Chapter 103E and 103D involving public drainage systems.

10.2 *Responsibility.* It remains the responsibility of the person or entity engaging in an activity which requires a drainage project petition prior to initiation pursuant to Minnesota Statutes Chapter 103E or 103D to make appropriate application to the drainage authority possessing jurisdiction.

Section 11: Enforcement Powers. The Board of Managers may enforce any violation of a watershed district's rules and regulations, or the terms, conditions, and/or limitations of a permit or other approval of a drainage activity issued thereunder, through injunction, action to compel performance, restoration, abatement, or other appropriate relief in the district court and/or by referral of criminal misdemeanor charges to the appropriate county attorney office.

11.1 A violation of a rule, regulation, order, stipulation, agreement, or permit issued by the Board of Managers under these rules and regulations shall be a misdemeanor as that term is defined by Minn.Stat. § 609.02, Subd. 3, as amended.

11.2 *Concurrent Authority to Enforce Water Law.* The enforcement powers described herein are not exclusive to the watershed district, but are concurrent with all county, state, and federal agencies possessing authority to regulate the activities embraced herein.

Section 12: Appeal of Decision by Board of Managers.

- 12.1 *Reconsideration.* Any person aggrieved by a decision on a permit or other action of the Board of Managers shall possess the right to appeal for reconsideration to the Board of Managers by making a written demand for a hearing within 30 days of the person receiving written notice of the decision.

- 12.2 *Appeal to District Court or BWSR.* Any person may appeal a rule, permit decision, or order made by the Board of Managers by appropriate action in accordance with appellate procedures and review provided in Minnesota Statutes.

Section 13: Adoption or Amendment of Rules.

- 13.1. *Procedure.* Rules of the Okabena-Ocheda Watershed District shall be adopted or amended by a majority vote of the Board of Managers after public notice and hearing. Rules must be signed by the secretary of the Board of Managers and recorded in the Board of Managers' official minute book in accordance with MS 103D.341, Subd. 2, as amended.

- 13.2 *Repeal of Rules.* All rules and regulations bearing an earlier date of adoption or amendment than these rules shall be of no further force or effect and shall be repealed on the date that these rules become effective. Hereafter, any adoption or amendment to these rules by the Board of Managers shall act as a repeal of these rules to the extent that such adoption or amendment is inconsistent herewith.

Section 14: Effective Date of Rules.

- 14.1 *Effective Date of Rules.* These rules shall be effective upon the date of the occurrence of the last of the following actions:
 - 14.1.1 Approval of the rules by the Board of Managers after notice and hearing and publication as required by law.

 - 14.1.2 Filing of the rules with the Board of Water and Soil Resources, the Nobles County Recorder and with the governing body of each municipality located, in whole or in part, within the watershed district.

These rules are hereby adopted pursuant to Minnesota Statute Chapter 103D on this 4th day of May, 2010.

Jeff Rogers
Secretary
Okabena-Ocheda Watershed District

Appendix A

OKABENA-OCHEDA WATERSHED DISTRICT WATER MANAGEMENT PERMITTING RULES

EROSION CONTROL AND STORMWATER MANAGEMENT

Purposes and Policy. The purpose of this section is to afford reasonable protection to the water quality and habitat of the Okabena-Ocheda Watershed District's lakes and streams. Erosion control measures provide for the prevention of nutrient, sediment and other pollutant loading from soils exposed during construction. Runoff storage and treatment systems provide for the filtration of nutrients, sediments, and other pollutants from storm flows; protection of stream beds and banks and mitigation of downstream flooding through moderation of peak flows both into and within the resource; preservation of aquatic and terrestrial habitat; protection of scenic resources; and maintenance of property values.

To accomplish these purposes, the Okabena-Ocheda Watershed District hereby adopts, by reference, the standards put forth in the Minnesota Pollution Control Agency's (MPCA) *General Permit Authorization to Discharge Stormwater Associated with Construction Activity Under The National Pollutant Discharge Elimination System/State Disposal System Permit Program*, along with any future amendments.

1. Permit Coverage and Limitations

1.1 A watershed district and National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) permit shall be required, and all construction site erosion control provisions of this permit shall apply, to land disturbing activities associated with construction activity and small construction activity as defined below.

1.1.1 Construction activity includes clearing, grading and excavation, that disturbs land of equal or greater than five (5) acres and includes the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more.

1.1.2 Small construction activity includes clearing, grading and excavation, that disturbs land of equal to or greater than one (1) acre, and includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five (5) acres.

1.1.3 For drainage ditches, small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

2 *Stormwater Pollution Prevention Plan: Permits and Administration*

2.1 No activity meeting the requirements for an NPDES/SDS Permit shall occur before a permit is issued from the Okabena-Ocheda Watershed District.

2.2 The applicant must provide the following when requesting a watershed district permit:

2.2.1 A completed watershed district application;

2.2.2 A copy of the Stormwater Pollution Prevention Plan (SWPPP) prepared for the MPCA NPDES/SDS Permit program;

2.2.3 A proposed timetable and schedule for completion and installation of all elements of approved erosion control and stormwater management plans and a proposed schedule for completion of construction; and

2.2.4 A \$10.00 application fee and \$40.00 site inspection fee.

3 *Permit Conditions*

3.1 The SWPPP shall be implemented prior to the start of any land disturbing activity and shall be maintained over the duration of the project. Permanent stormwater components of the plan shall be maintained in perpetuity.

3.2 The permittee is responsible for the successful completion of the SWPPP. The permittee shall be liable for all costs incurred, including environmental restoration costs resulting from noncompliance with an approved plan.

3.3 Application for a permit shall constitute express permission by the permittee and landowner for the watershed district Board of Managers, employees, agents and assigns to enter the property for purposes of inspection, monitoring a project for compliance with the SWPPP, and if necessary, requiring curative action.

4 *Permit Transfer*

When the owner or operator changes (e.g. an original developer sells portions of the property to various homebuilders), the new owner or operator must submit to the watershed district a copy of the change of ownership/subdivision short form application that was sent to the MPCA as a requirement of the NPDES/SDS Permit Program.

5 *Plan or Permit Amendments*

Any major modification to an approved SWPPP, construction schedules or alterations to accepted sequencing of land disturbing site activities shall be approved by the watershed district.

6 *Fees*

A \$10.00 application fee and a \$40.00 inspection fee shall be submitted with the erosion control and stormwater management permit application. Application fees are waived for public entities. After-the-fact permits will be subject to the application fee and all other costs incurred by the District. If, in the opinion of the Board of Managers, it is necessary for the watershed district engineer or other consultant to review the application and all exhibits, including the SWPPP, view the site and make a report to the watershed district as to the technical implications of the work, costs incurred by the watershed district during this review shall be borne by the applicant. Public entities are not exempt from these costs.

7 *Termination of Coverage*

A permittee wishing to terminate an erosion control and stormwater management permit must submit to the watershed district a copy of the Notice of Termination (NOT) form sent to the MPCA. Compliance with the erosion control and stormwater management permit is required until the NOT is received by the watershed district.

When residential lots are transferred to the home owner, the permittee must distribute the MPCA's "homeowner factsheet" to the homeowner to inform the homeowner of the need for, and benefits of, practices to achieve final stabilization of the lot.

8 *Compliance and Enforcement*

8.1 The watershed district will perform field inspections on all construction sites that disturb one or more acres to determine if:

8.1.1 The MPCA NPDES/SDS Permit application and a watershed district permit have been acquired.

8.1.2 There is a Stormwater Pollution Prevention Plan (SWPPP) for the site and it is being followed.

8.1.3 The Best Management Practices called for in the SWPPP are working properly.

8.2 The watershed district, during inspections, will record deficiencies and violations of permitting rules and SWPPP's. Recommendations for correcting deficiencies and violations will be distributed to landowners, contractors and permittees.

8.3 The watershed district, when necessary, will exercise enforcement actions up to and including issuing "stop work orders" for sites that do not comply with MPCA NPDES/SDS and watershed district permit requirements.

8.4 The watershed district will make non-compliance determinations and referrals to MPCA to take enforcement action in the following situations.

8.4.1 All non-permitted sites that disturb one or more acres.

8.4.2 Permitted and non-permitted sites where serious environmental damage has occurred to surface waters.

Appendix B

OKABENA-OCHEDA WATERSHED DISTRICT WATER MANAGEMENT PERMITTING RULES

EROSION CONTROL ON CONSTRUCTION SITES SMALLER THAN ONE ACRE

Purposes and Policy. The purpose of this section is to afford reasonable protection to the water quality and habitat of the Okabena-Ocheda Watershed District's lakes and streams. Erosion control measures provide for the prevention of nutrient, sediment and other pollutant loading from soils exposed during construction.

1. *Earth Moving Projects:* A district permit will be required for any earth moving project which will result in:

- grading involving more than 200 cubic yards of cut or fill and which project, or any part thereof, is within 300 feet of a water of the state or is within 1000 feet of a lake; or
- disturbance of more than 10,000 square feet of soil and which project, or any part thereof, is within 300 feet of a water of the state or is within 1000 feet of a lake.

Waters of the state include: street gutters, stormsewer catch basins, natural streams, drainage ditches, drainage tile intakes and wetlands. The purpose of the permit is to insure that adequate erosion control measures are taken before, during and after the earth moving project.

2. *Permit Requirements:* Permit applicants must submit one set of the following documents to the Board for its review:

2.1 A Completed Permit Application Form. A request for permit under these rules shall be commenced by delivering, either in person or by U.S. Mail, a signed application on the form required by the Board of Managers to the office of the Okabena-Ocheda Watershed District, 960 Diagonal Road, P.O. Box 114, Worthington, MN 56187.

A \$10.00 application fee and a \$15.00 inspection fee shall be charged for each erosion control plan permit. Application fees are waived for public entities. Erosion control plan information must be submitted with the application. After-the-fact permits will be subject to the application fee and all other costs incurred by the District.

If, in the opinion of the Board of Managers, it is necessary for the watershed district engineer or other consultant to review the application and all exhibits, view the site, and make a report to the watershed district as to the technical implications of the work, costs incurred by the watershed district during this review shall be borne by the applicant.

2.2 A set of Project Plans, including at least:

- A scale drawing of the site showing property lines and delineation of lands under ownership of the applicant and the proposed earth moving project.
- An Erosion Control Plan showing proposed methods of retaining waterborne-sediments onsite during the period of construction, and shall specify methods and schedules to determine how the site will be restored, covered, or revegetated after construction. *[Note: an erosion control plan does not require the signature of a registered professional engineer.]*

2.3 In addition, the permit applicant shall provide specific measures to control erosion based upon recognized engineering standards and the grade and length of the slopes on the site, to include--at a minimum--the following:

2.3.1 Silt fences or other approved devices shall be placed near the toe of the slopes to prevent soil from moving offsite. All devices shall be installed in accordance with the adopted standards. All silt fences and other devices must be replaced, supplemented or repaired when they become non-functional or sediment reaches the height defined in the adopted standards. These repairs must be made within 24 hours of discovery or as soon as field conditions allow.

2.3.2 Diversion channels or dikes and pipes shall be provided to intercept all drainage at the top of slopes that have grades of more than 10:1. Also, diversion channels or diked terraces and pipes shall be provided across said slopes if needed to ensure that the maximum flow length does not exceed 100 feet. No unbroken slopes longer than 75 feet on grades steeper than 3:1 shall be allowed.

2.3.3 Require that a device meeting the approved standards be installed, around each catch basin inlet on the site. The device shall remain in place until final stabilization of the site occurs.

2.3.4 Ensure that flows from diversion channels or pipes are routed to sedimentation basins or appropriate energy dissipaters in order to prevent transport of sediment to outflow conveyors and to prevent erosion and sedimentation when runoff flows into the conveyors. Any temporary or permanent drainage ditch that drains water from a construction site, or diverts water around a site, must be stabilized within 200 linear feet of the property boundary. Stabilization and energy dissipation practices, where needed, must be installed within 24 hours of the connection to surface water.

2.3.5 Provide that site-access roads be graded or otherwise protected with a device or devices meeting the approved standards to prevent sediment from leaving the site via the access roads.

2.3.6 Require that soils tracked from the site by motor vehicles be cleaned daily (or more frequently, as necessary) from paved roadway surfaces throughout the duration of construction.

2.3.7 Assure that all erosion and sediment control measures be deployed, inspected and maintained for the duration of site construction. If construction operations interfere with these control measures, the devices may be removed or altered as needed but shall be restored to serve their intended function at the end of each day.

2.3.8 Describe temporary erosion protection or permanent cover used to prevent erosion of exposed soil. All exposed soil areas must be stabilized within 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. A schedule of significant grading work will be required as part of the erosion and sedimentation control plan.

2.3.9 Require that temporary erosion protection and permanent cover be provided in accordance with the adopted standards.

2.3.10 Maintain an undisturbed grassed area, or install and maintain silt fence or other approved device, or provide a 4-foot wide sodded area along the curb line of all streets adjacent to the site and along all property boundaries where runoff could leave the site.

2.3.11 Erosion control practices must be maintained until final stabilization of the site occurs. (70 percent vegetative cover is achieved.)

Appendix C

OKABENA-UCHEDA WATERSHED DISTRICT

960 Diagonal Road, P.O. Box 114
Worthington, MN 56187

SUBSURFACE TILE DRAINAGE PROJECT NOTIFICATION FORM

Applicant _____ Phone _____

Address _____ City _____ State _____ Zip _____

LEGAL DESCRIPTION OF PROJECT SITE

_____ 1/4 _____ 1/4 Section _____ Township _____

_____ 1/4 _____ 1/4 Section _____ Township _____

Project Street Address (if applicable) _____

Landowners Name _____ Phone _____

PROJECT DESCRIPTION

_____ New Tile Diameter _____ Length _____

_____ Tile Repair Diameter _____ Length _____

_____ Other Project _____

Attach an aerial photo, site map or engineer's design for your project. Include proposed tile, existing drainage systems, erosion control plans and other relevant information.

Landowners are strongly encouraged to communicate and cooperate with neighboring landowners to convey water with the least possible damage to existing drainage systems and the receiving waters.

CONDITIONS FOR INSTALLATION OF TILE WITHOUT A PERMIT

Landowners are required to report proposed drainage projects to the Nobles County Farm Services Agency, Nobles Soil and Water Conservation District and Worthington Natural Resources Conservation Service office before installing tile.

Projects may not drain or alter wetlands regulated by the Minnesota Wetland Conservation Act or federal farm bill programs.

Projects may not install new intake devices, inspection pipes, or vents that potentially allow unfiltered surface water to enter the subsurface drainage system.

Projects may not convey sewage, manure or other pollutants.

Landowners must receive written permission from the appropriate road authority before outletting or installing tile in a road right-of-way.

Projects must have a non-erosive outlet.

Landowners must obtain permission from the ditch authority, shoreland ordinance administrator or Department of Natural Resources, as needed, before installing outlets in public drainage systems or waters of the state.

Projects must be completed within two years of filing a subsurface drainage tile notification form.

The information submitted in this notification form is true and accurate to the best of my knowledge. I have read and understand the conditions stated above. I grant Okabena-Ocheda Watershed District Managers and staff permission enter the land described above to inspect the site for compliance with watershed district rules.

Landowner Signature

Date