

LAC QUI PARLE — YELLOW BANK WATERSHED DISTRICT
RULES AND REGULATIONS
REVISED December 3, 2013

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SECTION 1. GENERAL POLICY

Subd. A. Introduction

The LQP-YB Watershed District was established by order of the Minnesota Water Resources Board on April 19, 1971. The Board of Managers acknowledges the great responsibilities which are imposed upon the District by law. Among the responsibilities are the conservation of natural resources of the District; control and alleviation of flood damage; regulation and use of streams, lakes and water courses for domestic, recreational and public use; ensuring of adequate provisions for the disposal of sewage and other pollutants; development of water management plans; prevention of soil erosion; and preservation of water quality.

The purpose of these District rules and regulations is to promote public health and welfare and to minimize loss of lives and property caused by unregulated and uncontrolled water and mismanagement of the natural resources within the District. The regulations are deemed necessary and make more specific the plan of operation for the District.

The Board of Managers requires that permits be secured from the District prior to the start of planned improvements. The request for permits is not intended to be a denial or a delay for works of improvements. The permits are necessary for the Managers to be informed of planned projects and to insure orderly development of the natural resources.

A permit from the District for works of improvement does not relieve the applicant from the responsibility of obtaining any other additional permits or authorizations required by other agencies when public waters are involved.

It is the intention of the Managers that no person shall be deprived or divested of any previously established beneficial use or right to natural resources by any rule or regulation of the District without due process of the law and that all rules and regulations of the District shall be construed to said intention. The District's rules and regulations are intended to assist in the orderly use and conservation of the waters of the District.

SECTION 2. DEFINITIONS

For the purpose of these regulations, the following terms shall have the meanings attached to them.

Dike: A levee, embankment, or structure constructed for the purpose of restraining or changing the flow of the waters of a Natural Drainageway or wetland.

District: All of the land area within the established boundaries of the Lac Qui Parle-Yellow Bank Watershed District. See map in Appendix A.

Drainage Area: The watershed of a drainageway; all of the land area that drains into a Natural Drainageway, Public Drainageway, or Private Drainageway.

Managers: The Board of Managers of the District.

Natural Drainageway: All naturally formed rivers, creeks or waterways which provide a course for water flowing continuously or intermittently.

Person: An individual, firm, partnership, association or corporation but does not include public or political subdivisions.

Plan: Maps, drawings, and supporting data for proposed works.

Private Drainageway: Private Open Ditches and Private Drain Tile, collectively.

Private Drain Tile: Any privately owned underground conduit used to collect and conduct the flow of water in order to drain lands within the District.

Private Open Ditch: Any privately owned open channel used to conduct the flow of water in order to drain lands or convey surface water within the District.

Public Drain Tile: Any publicly owned underground conduit used to collect and conduct the flow of water in order to drain lands within the District.

Public Drainageway: All artificially constructed Judicial Ditch Systems or County Ditch Systems or Watershed District Drainage Systems subject to Minnesota Statutes Chapter 103E; a “drainage system” as defined by Minnesota Statutes § 103E.005, Subd. 12.; a Public Open Ditch; or Public Drain Tile.

Public Corporation: Means a county, town, school district, or a Political division or subdivision of the state.

Public Open Ditch: Any publicly owned open channel used to conduct the flow of water in order to drain lands or convey surface water within the District.

Shall: The word shall is mandatory not permissive.

Watershed: All of the land area bounded peripherally by a drainage divide which collects precipitation and provides runoff to a particular Drainageway.

Wetland: Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water and where hydric soils and hydrophytic vegetation are present under normal circumstances. This includes public waters wetlands as designated by the Minnesota Department of Natural Resources and wetlands under the jurisdiction of the Wetland Conservation Act.

SECTION 3. PERMIT REQUIREMENTS

The Managers find that a permit program is needed to help ensure wise development and conservation of the District's water resources in accordance with the District's watershed management plan. Any permit required by these rules will be issued in accordance with the procedural process of this Section. Work that requires a permit from the District may not be undertaken until a permit is issued. Obtaining a District permit does not relieve an applicant from the responsibility of obtaining all other required federal, state, and local permits.

Subd. A. Application. All applications for a District permit are subject to the following requirements:

- (1) Prior to the submission of any application, the applicant must meet with District Staff for a scoping meeting. This may be conducted in-person or over the telephone. The purpose of the meeting is to ensure the applicant is aware of the scope of the District's rules, the application requirements, and the standards for approval of an application.
- (2) All applications for a District permit must be submitted on the District's application form.
- (3) The District does not currently charge a permit fee. No permit fee shall be charged to the federal government, the State, or a political subdivision.
- (4) All applications are encouraged to be submitted to the District Administrator 10 business days prior to the next regularly scheduled Board Meeting in order to ensure that the application is on the agenda.
- (5) Drawings or plans are required to be submitted with every permit application. The drawings or plans are not required to be prepared by an engineer, but they must adequately depict the information required by the application form. For all projects involving any drainageway, the applicant must identify the Drainage Area.
- (6) A site inspection may be required prior to the approval of a permit application.
- (7) Obtaining a District permit does not relieve the applicant from the responsibility of obtaining any other necessary permits or approvals from other governmental units or agencies. The District will endeavor to inform the applicant of permits which may be required. The District, however, will not be responsible if the applicant fails to obtain any required permits.

Subd. B. Board Approval. The Board shall review all permit applications.

- (1) The Board shall review permit applications at regularly scheduled meetings. A permit may be reviewed by the Board at a special meeting when requested by an applicant, and at the applicant's sole expense.
- (2) The Board may add reasonable conditions to the approval of a permit to address site-specific or activity-specific concerns.
- (3) All permits shall be deemed issued when signed by a manager, approved by the District Board of Managers, and all conditions of the permit have been satisfied.
- (4) If the District denies an application, written reasons for the denial will be provided.

Subd. C. Conditions. A permit may be approved subject to reasonable conditions to assure compliance with the requirements and intent of these rules and address site-specific or

activity-specific concerns. All conditions of the permit, to the extent possible, must be satisfied before the permit is deemed to be issued and the applicant can begin work.

- (1) Inspections may be required to ensure that the applicant complies with the conditions of the permit. By requesting or receiving a District permit, an applicant affirmatively grants the District a right of entry onto the applicant's property for the purpose of performing required site inspections.
- (2) The requirements of any other permission (NPDES permit, wetland determination, public water permit, etc.) required for the proposed activity are incorporated into the District permit.
- (3) A violation of other required permits is a violation of the District permit.

Subd. D. Deadlines for Action. The District will seek to approve or deny a permit application within 60 days after receipt of a complete application.

- (1) An application that requires a site inspection is not deemed complete until a site inspection is completed by a Manager or District Staff. When weather, or other uncontrollable natural conditions, makes a site inspection temporarily impossible, then the timeline under this Section and Minnesota Statutes 15.99 is tolled until conditions allow for the site inspection. Within 15 business days of receiving an application, the District will notify the applicant if the application is incomplete. Within 15 days, the District will also notify the applicant if the application requires a site inspection and is therefore incomplete until the site inspection is performed.
- (2) The District will comply with Minnesota Statutes Section 15.99 where it is applicable. Failure to meet an approval deadline shall not authorize any activity for which a permit cannot be granted because the activity is unlawful under applicable law. Before the expiration of the initial 60 days, the District may extend any applicable initial 60-day period to 120 days by providing written notice of the extension to the applicant.
- (3) If a state or federal law or court order requires a process to occur before the District acts on an application, or if an application requires prior approval of a state or federal agency, any applicable deadline for the District to approve or deny is extended to 60 days after completion of the required process or the required prior approval is granted.

Subd. E. Performance Surety. In accordance with Minnesota Statutes § 103D.345, Subd. 4, the Board may require a performance surety, such as an approved escrow deposit, a bond, or an irrevocable letter of credit, to secure performance of permit conditions and compliance with District rules. The federal government, State, and political subdivisions are exempt from the requirements of this subdivision.

- (1) When the Board requires a performance surety, it shall be for an amount sufficient to cover the potential costs of restoration that may result from a violation of the permit. The District engineer shall assist in determining this amount.

- (2) The performance surety must be in a form acceptable to the District and from a surety company licensed to do business in Minnesota. The performance surety must be in favor of the District and be conditioned on the applicant's compliance with the terms of the permit. The performance surety must allow the District to claim the performance surety if the conditions are not met and use the forfeited funds to complete the work. If the surety funds are insufficient to complete the work, the applicant may be assessed for the balance. Unused funds shall be returned to the applicant.
- (3) The District shall release the performance surety in writing after all work is completed in compliance with the permit and District rules. The District, in writing, may release a portion of the surety if the entire surety, in the District's sole discretion, is no longer necessary to secure compliance with the permit and District rules.
- (4) When a permit is conditionally approved upon the applicant providing a performance surety, the surety must be provided to the District before the permit is deemed to be issued and the applicant can begin work.

Subd. F. Project Agreement. The Board may require that an applicant and owner, including any mortgagee, enter into an agreement with the District, to specify responsibility for the construction and future maintenance of approved structures; document other continuing obligations of the applicant or owner; grant reasonable access to the proper authorities for inspection, monitoring and enforcement purposes; affirm that the District or other political subdivisions can require or perform necessary repairs or reconstruction of such structures; require indemnification of the District for claims arising from issuance of the permit or construction and use of the approved structures; and reimburse the reasonable costs incurred to enforce the agreement. Permits and agreements may be filed for recording with the County Recorder to provide notice of the conditions and continuing obligations. When a permit is conditionally approved upon the applicant entering into an agreement with the District, the agreement must be executed before the permit is deemed to be issued and the applicant can begin work.

Subd. G. Assignment and Transfer of District Permits. An assignment or transfer of a District permit without a change in the approved plans may be approved by the Board. No assignment or transfer of a District permit is allowed where the approved plans are changed. A change in the approved plans requires a new permit application. No assignment or transfer shall relieve the original applicant from liability under the permit.

Subd. H. Notice of Completion. Applicants must notify the District and submit an as-built map of the completed project within 90 days after the completion of any project for which a permit has been granted.

Subd. I. Expiration of District Permits. Permits are valid for 12 months from the date they are issued. Permit extensions of one year may be granted by the Board. Additional conditions may be added to the permit when an extension is requested. No extension of a District permit shall serve as an extension of other government permits necessary for the project; the extension of other government permits must be obtained from the entity that issued the permit.

Subd. J. Exemption. The Board may hear requests for an exemption from the provisions of these rules in the rare circumstances where strict enforcement would cause undue hardship because of conditions unique to the property under consideration and not created by the landowner. The Board may grant an exemption in the rare circumstances where it is demonstrated that such action will be consistent with the spirit and intent of these rules. Such a request must be addressed to the Board as part of a permit application. In order to grant an exemption, the Board must find that the request meets ALL of the following four standards:

- (1) Special conditions apply to the applicant's property that do not apply generally to other property within the District.
- (2) Because of the unique conditions of the property involved, undue hardship to the applicant will result, as distinguished from mere inconvenience, if the strict letter of the rules is carried out. Economic considerations alone shall not constitute undue hardship if any reasonable use of the property exists under the terms of the District's rules.
- (3) The proposed activity for which the exemption is sought will not adversely affect the public health, safety, and welfare; will not create extraordinary public expense; and will not adversely affect water quality, water control, or drainage in the District.
- (4) The intent of the District's rules is met.

An exemption expires when the permit it is associated with expires. A violation of any condition for a permit where an exemption has been granted shall automatically terminate the exemption.

SECTION 4. NATURAL DRAINAGEWAYS

Subd. A. Purpose. The District intends to manage the alteration and drainage into Natural Drainageways in order to minimize peak flows after storm events and spring run-off and prevent changes to the Natural Drainageways that might obstruct flows or negatively impact downstream properties.

Subd. B. Permit Required for Certain Activities in Natural Drainageways. A permit is required for the following:

- (1) Any new or improved Private Drainageway outlet into a Natural Drainageway.
- (2) The construction, installation, or alteration of any water control structure in any water body.
- (3) The construction, reconstruction, or laying of any bridge, culvert, embankment, or crossing within or across any Natural Drainageway.
- (4) The alteration of the channel or cross-section of any Natural Drainageway.

Subd. C. Standards. A Natural Drainageway permit under this section shall meet the following standards:

- (1) Alteration in a Natural Drainageway that divert water into another watershed may be approved in limited circumstances where one of the following exists: (a) there is a hardship imposed by topography, (b) neighboring property owners will not permit necessary work to accomplish reasonable drainage; or (c) local governments or road authorities will not permit necessary work to accomplish reasonable drainage.
- (2) New or improved Private Drainageway outlet coefficients shall not be greater than those of the receiving Natural Drainageway
- (3) All trees and obstructions cut along the Natural Drainageways shall be removed.
- (4) All new or improved outlets into Natural Drainageways shall provide a stable outfall and be constructed with a design that will not cause a deterioration of the channel or impede the flow of water.
- (5) All materials placed in a Natural Drainageway must be approved by the District.
- (6) Any bridge, culvert, or crossing must have a capacity that is compatible with the nearest upstream and downstream bridge, culvert or crossing; unless intended for water control purposes.
- (7) All work must reasonably minimize soil erosion, giving appropriate consideration to capacity of the Natural Drainageway and soil characteristics.

SECTION 5. PRIVATE DRAINAGEWAYS

Subd. A. Purpose. Within the District, Private Drainageways drain vast amounts of land and have direct impacts on Natural and Public Drainageways. The District intends to regulate Private Drainageways in a manner consistent with Natural and Public Drainageways that minimizes flooding, avoids impacts to downstream properties, and preserves and improves water quality.

Subd. B. Permit Required for Certain Activities in Private Drainageways. A permit is required for the construction or alternation of any Private Drainageway.

Subd. C. Standards. A Private Drainageway permit under this section shall meet the following standards:

- (1) There is a presumption that Private Drainageways shall not divert water into another watershed. The presumption may be overcome by the Managers finding that the diversion is the result of an unusual hardship and will not materially alter any watershed. The Managers, when such a diversion is requested, shall consider: (a) capacity of the receiving watershed; (b) the number of property owners impacted; (c) the number of acres of land impacted; (d) the existence of any

wetland, water quality, or flooding impacts; and (e) whether the diversion best serves the interest of the public. The applicant has the sole burden to prove that an unusual hardship exists and that the diversion will not materially alter any watershed.

- (2) New Private Drainageway coefficients shall not exceed those of the receiving drainageway.
- (3) All trees and obstructions cut along open ditches shall be removed or burned.
- (4) Written approval from the appropriate township, county, or state officials must be obtained before any Private Drainageway outlets into public road right-of-way.
- (5) All work must reasonably minimize soil erosion or sedimentation, giving appropriate consideration to topography and soil characteristics.

SECTION 6. PUBLIC DRAINAGEWAYS

Subd. A. Purpose. The District is the drainage authority for several Public Drainageways. The District intends to maintain beneficial drainage capacity, minimize flooding, and preserve and improve water quality by regulating the use of Public Drainageways under the District's authority, in compliance with the public drainage law in Minnesota Statutes Chapter 103E.

Subd. B. Permit Required. A permit from the District is required for all new or improved Public Drainageways.

Subd. C. Standards. A Public Drainageway permit under this section shall meet the following standards:

- (1) The Administrative procedure for alteration, repair improvement or new construction of Public Drainageways will conform to Minnesota Statutes Chapter 103E.
- (2) No person, public or private corporation, or other entity shall drain into any Public Drainageway, for which the District is the drainage authority, from any land not assessed to said Public Drainageway without securing a permit.
- (3) All trees cut along Public Drainageways shall be removed or burned.
- (4) All work to Public Drainageways, for which the District is the drainage authority, shall comply with the standards of Minnesota Statutes Chapter 103E.

SECTION 7. DIKES, LEVEES AND DAMS

Subd. A. Purpose. The District intends to regulate intentional flooding of land, impoundment of water, creation or expansion of wetlands, and the alteration of Natural Drainageways in order to minimize property damage, preserve drainage capacity, and preserve or improve water quality.

Subd. B. Permit Required. A permit is required before any dike or dam is constructed or altered in any way on or near any Natural, Public or Private Drainageway, any lake or any wetland that diverts, detains, or impounds water. County zoning permits, including conditional use permits, may also be required for dikes and levees.

Subd. C. Standards. A permit under this section must meet the following:

- (1) The natural flow of surface water shall not be artificially obstructed so as to cause an overflow onto the property of other landowners without their consent.
- (2) All work must reasonably minimize soil erosion and sedimentation, giving appropriate consideration to topography and soil characteristics and stability.
- (3) The applicant must provide project plans and specifications, including, but not limited to, depth, elevation, and impacted surface area.
- (4) The District may require an applicant to provide engineering data for the project.
- (5) Normal maintenance which does not alter the effectiveness of the structure and harvesting of grass may be done without a permit.

SECTION 8. WATERSHED DISTRICT NOTICE

Subd. A. Purpose. The District must focus its regulatory efforts due to limited resources. Other third party regulatory entities within the District regulate activities relevant to water quality and water quantity. Where these other regulated activities, though within the regulatory purview of the District, are outside of the scope of direct regulation under the District's rules, the District requires notice and an opportunity to comment in the permitting process for these other regulated activities.

Subd. B. Applicable Review Processes and Permits. This Section applies to the following review processes and permits issued within the watershed:

- (1) Water appropriation or water use permits under Minnesota Statutes 103G issued by the Minnesota Department of Natural Resources.
- (2) NPDES permits, any pollution discharge permits required under Minnesota Statutes Chapter 115, Minnesota Rules, or other state law, including storm water pollution prevention plans required under NPDES permits.
- (3) Wetland applications under Minnesota Statutes Chapter 103G and Minnesota Rules Chapter 8420, U.S. Army Corp of Engineers permits under Sections 404 or 401 of the federal Clean Water Act.
- (4) Public waters permits required under Minnesota Statutes Chapter 103G and Minnesota Rules Chapter 6115.

- (5) Any land acquisition for wildlife habitat restoration by government agencies, private persons, and private organizations.

Subd. C. Notice. Third party regulatory entities with authority in the District, applicants for such approvals, or both shall provide the District, as soon as practical, with a copy of review documents and permit applications listed in Subd. 2 of this Section. The regulatory entity, applicant for such approvals, or both shall also provide the date and time of any public hearings related to the environmental review or permit application, if applicable.

Subd. D. Comment. The District will provide the regulatory entity with comments on behalf of the District as soon as practical.

Subd. E. Copy for District Files. A copy of the permit, if any, issued by the regulatory entity will be maintained in the District's files.

SECTION 9. WCA AUTHORITY

The District assumes the responsibility as the Local Government Unit (LGU) within Lac Qui Parle County for purposes of the Wetland Conservation Act (WCA) found in Minnesota Statutes 103G. The WCA, as amended, and the rules implementing the WCA as set forth in Minnesota Rules Chapter 8420, as amended, are incorporated as part of these regulations and shall govern draining, filling and dredging wetlands.

SECTION 10. PENALTY AND ENFORCEMENT

Subd. A. Violation is a Misdemeanor. A violation of a District rule or a permit issued under District rules is a misdemeanor subject to the maximum penalty provided by Minnesota law.

Subd. B. Notification Regarding Violations. The District, at its discretion, may file notification of a violation or threatened violation of any part of these rules, or other environmental rules or standards, by any person or political subdivision with any appropriate state or federal agency. Such notification shall not preclude any right of the District to prevent or continue to prevent any act not allowed or any action required to be performed by these rules, nor shall it prevent simultaneous actions to be taken against any violator by the District, an appropriate state or federal agency, the courts, or any other person or authority having jurisdictional powers or interest to take such action.

Subd. C. Court Action. The District may exercise all powers conferred upon it by Minnesota Statutes Chapter 103D in enforcing these rules, including criminal prosecution, injunction, or an action to compel performance, restoration, or abatement.

Subd. D. Administrative Order. The District may enforce its rules by issuing a cease and desist order when it finds that an activity violates any rule of the District.

Subd. E. Order to Show Cause. The Board may require a person or political subdivision in violation of a District rule or permit to appear at a District meeting to show cause why the violation should be allowed to continue.

Subd. F. Future Permits. No future permit shall be issued to an applicant in violation of District rules or a previously issued District permit until the violation has been remedied to the sole satisfaction of the District.

Subd. G. Contractor Liability. Any person or political subdivision contracting to perform services regulated by these rules shall perform all work in compliance with the conditions and specifications of the permit and the rules. Contractors in violation shall be subject to all sanctions or penalties, criminal or civil, imposed by these rules.

SECTION 11. APPEAL

Any person adversely affected by the approval or denial of a permit by the District may appeal under the appeal and dispute resolution procedures provided in Minnesota Statutes Sections 103D.537 and 103D.539, or successor Statutes.

APPENDIX A

Map of Lac Qui Parle-Yellow Bank Watershed District

