



Buffer Law

Frequently Asked Questions

September 18, 2015

I. ESTABLISHMENT AND MAINTENANCE OF BUFFERS

1. **Q:** *Can a landowner till the buffer area to establish or re-establish alfalfa or other perennial vegetative cover?*

A: Yes, temporary tillage for alfalfa establishment is an exempt activity.

2. **Q:** *How will landowners know where to measure the buffer width? Will it be the same for ditches, creeks, rivers, lakes and wetlands?*

A: The buffer width for all water bodies covered under the law is measured from the top of the bank or from the normal water level if there is not a defined bank. The SWCD can assist with or validate buffer width measurements if requested.

3. **Q:** *To meet the buffer requirement, do landowners have to plant native grasses? Is reed canary grass acceptable?*

A: No, planting of native species is not required, but native species are generally preferred for their root structure, habitat benefits and drought tolerance. In addition, most voluntary conservation programs, such as CRP, have some native grass planting requirements. Existing reed canary grass stands currently meet the perennial vegetation standard. However, new plantings are recommended to avoid using non-native, invasive species. BWSR will be developing guidance on establishing buffers, including which plants should be used.

4. **Q:** *Does this law allow for haying or grazing of the buffer?*

A: Yes, haying and grazing practices that maintain perennial vegetative cover are allowable uses.

5. **Q:** *Does the new buffer law address cattle entering the water or require exclusionary fencing?*

A: No, other voluntary practices such as fencing and watering systems can address that concern. Use of the buffer to graze livestock cannot result in the elimination of perennial vegetation on the buffer.

6. **Q:** *Is fertilizer application or pesticide spraying allowed on the buffer area?*

A: Existing requirements and best management practices for application of fertilizer and pesticides are unchanged by the new buffer strip requirement.

7. **Q:** *Is excavated sediment or spoil from a ditch allowed to be placed on the buffer area to dry?*

A: Yes, temporary placement for drying is allowed with permission from the landowner, if the project is authorized by a governmental entity, and perennial vegetation is re-established. Reshaping and seeding of required buffers is allowed, and measures to minimize soil loss during reseeding are recommended.

II. USE OF ALTERNATE PRACTICES

- 1. Q:** *What constitutes an “alternative practice” and what will be used to determine if an alternate practice(s) is sufficient?*

A: Additional definition and guidance on “alternative practices” has yet to be developed. However, these practices will be based on the NRCS Field Office Technical Guide (<http://bwsr.state.mn.us/buffers/assets/alternative-practice-options.pdf>). The SWCD will validate alternative practices if requested.
- 2. Q:** *Can landowners implement alternate practices without local government approval?*

A: An alternate practice validation is provided by the SWCD if requested but is not required. A landowner that implements an alternate practice is recommended to maintain design, contract or other records for the installed alternate practice.
- 3. Q:** *For buffer requirements on Public Waters, how will the “50-ft average width” be determined?*

A: The 50-ft average, 30-ft minimum width provision is meant to be a practical way to accommodate meanders in streams and other landscape characteristics to ensure that buffers provide water quality benefits. The average of 50 feet of buffer with a 30 foot minimum must be achieved within a parcel to meet the requirement. Additional details and guidance on this provision and alternative practices that may be used in place of a buffer have yet to be developed.
- 4. Q:** *If a landowner installed a water quality practice via a USDA design, will that be considered an acceptable or sufficient alternate practice?*

A: Potentially. An alternate practice validation can be requested from the SWCD prior to or after a project or practice is in place. An alternate practice validation can last as long as the project or practice is functioning adequately as compared to the as-designed specification. If a landowner disagrees with a SWCD decision it can be appealed administratively to BWSR.

III. FUNDING FOR BUFFER IMPLEMENTATION

- 1. Q:** *Are the buffer implementation funds for local government implementation only available for the buffers required by the new legislation or are they for any riparian buffer projects?*

A: The priority/focus will be meeting the new law’s requirements and in financially supporting the work of local government.
- 2. Q:** *When will the local implementation funding be available?*

A: The initial allocation of funds was authorized by the BWSR Board on August 27, 2015 and are available beginning in September 2015.
- 3. Q:** *Will there be funds available to help drainage systems cash flow the buffer payments?*

A: There are loan funds available via the [MPCA's Clean Water Partnership Loan Program](#) and the [MDA's Ag BMP Loan Program](#).

4. **Q:** *What is the expected outcome for the local implementation funds?*

A: The funds will be focused on baseline inventories, public drainage proceedings to establish buffers, mapping assistance, technical assistance to landowners and potentially some supplemental financial assistance to landowners.

5. **Q:** *Is the supplemental new funding for SWCDs (\$11M/yr) related to the new buffer and soil loss policy provisions?*

A: Not directly, the additional funding is to add capacity for all SWCD responsibilities, of which the new buffers initiative is one.

IV. OTHER BUFFER LAW PROVISIONS

1. **Q:** *When do the excessive soil loss provisions take effect and how will they be carried out?*

A: The revised excessive soil loss provisions took effect July 1, 2015. A complaint-based approach will be used as a start to this effort. BWSR will be preparing a program plan over the next several months and adopting policy and guidance for local governments to follow. Full implementation is expected to commence in mid-2016.

2. **Q:** *When do the SWCDs have to identify and submit other watercourses (nonpublic waters and nonpublic ditches) for inclusion into local water management plans? How are local water plans expected to manage these other identified watercourses?*

A: The SWCD's need to identify these other watercourses by July 2017, and they should be added to the county, watershed district or 1-Watershed-1-Plan at the earliest practical opportunity via an amendment or update. Future state funding opportunities may be tied to the expected amendments. Additional guidance is in development.

V. COMPLIANCE AND ENFORCEMENT

1. **Q:** *What is the procedure for filing a complaint about a missing buffer or alternate practice or for excessive soil erosion?*

A: Neither are yet developed. Note that the initial buffer requirements do not take effect until November 1, 2017.

2. **Q:** *To be compliant with the deadlines established by law, does the buffer need to be growing by the deadline or be seeded by the deadline?*

A: If the buffer area is seeded by the deadline it will be deemed compliant (November 1, 2017 for public waters, and November 1, 2018 for public drainage systems).

3. **Q:** *Are producers that have received a MN Ag Water Quality Certification subject to the new buffer or alternate practice requirements?*

A: Yes, but the certification means they have already fully met the buffer or alternate practice requirement.

4. **Q:** *If the ditch authority does not take action to address acquisition and payment for the one rod buffer, what can a landowner do?*
- A:** The landowner is responsible for the establishment of buffers on public ditches and private ditches within the benefitted area on their land. If a drainage authority does not take action to acquire the one-rod buffer, landowners may file a petition requesting the one-rod buffer strip be acquired under Minn. Stat. Chapter 103E.
5. **Q:** *Who has the authority to issue the Administrative Penalty Order (APO) for buffer non-compliance?*
- A:** Counties, watershed districts and BWSR. If a county or watershed district does not accept or elect to use the delegated APO authority, BWSR will.