

**MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

**REVISIONS
PURSUANT TO MINNESOTA STATUTES §103D.341**

**Adopted May 26, 2011
Effective June 1, 2011**

FINANCIAL ASSURANCES RULE

1. POLICY. It is the policy of the Board of Managers to:

- (a) conserve the water resources of the District by assuring compliance with the District's rules in the performance of activities within the watershed; and
- (b) require a financial assurance to be submitted with a permit application, conditioned on adequate performance of the authorized activities and compliance with District rules as an effective means to conserve the water resources of the District.

2. FINANCIAL ASSURANCE REQUIREMENT.

- (a) A financial assurance instrument (performance bond, letter of credit, cash escrow deposit or other assurance) may be required as a condition of issuance of a permit under the District rules.
- (b) A financial assurance will not be required of any agency of the United States or of any governmental unit or political subdivision of the state of Minnesota.

3. FINANCIAL ASSURANCE CRITERIA. The required amount and duration of financial assurances will be set by the Board of Managers by resolution and subject to periodic review and revision in consideration of the following criteria, which apply to all financial assurances required by the District rules. (The current schedule of financial assurance amounts and durations may be obtained from the District office or website: www.minnehahacreek.org.)

- (a) Required amounts and durations of financial assurances will be set to ensure against potential liabilities to the District, including but not limited to:
 - (1) Application, field inspection, monitoring, consultant services and related fees authorized under Minn. Stat. § 103D.345;
 - (2) The cost of implementing and maintaining protective measures required by the permit; and

(3) The cost of remedying damage resulting from permit noncompliance or for which the permittee otherwise is responsible.

(b) The financial assurance instrument shall be in a form acceptable to the District. A commercial assurance must be issued by a surety licensed and doing business in Minnesota. (Templates may be obtained from the District office or website, www.minnehahacreek.org.)

(c) The financial assurance shall be issued in favor of the District and conditioned upon the applicant's performance of the activities authorized in the permit in compliance with the terms and conditions of the relevant permit(s) and all applicable laws, including the District rules, and payment when due of any fees or other charges authorized by law, including the District rules. The financial assurance shall state that in the event the conditions of the financial assurance are not met, the District may make a claim against it. In the event that the District makes a claim against a financial assurance, the District may require the full amount to be restored within 45 days.

(d) The financial assurance instrument shall contain a provision stating that it will not be canceled without at least thirty (30) days prior written notice to the District by the surety.

(e) Financial assurances shall be required of and submitted by the permit applicant, but the surety principal may be the landowner or the individual or entity undertaking the proposed activity.

(f) When a cash escrow is to be provided to fulfill District financial assurance requirements, the permittee/escrow provider will be required as a condition of permit issuance, transfer or renewal to enter into a cash escrow agreement with the District. Permit approval may be revoked for failure to comply with this requirement.

4. FINANCIAL ASSURANCE RELEASE.

(a) For a financial assurance covering a single project, on written notification of project completion, the District may inspect the project. If the project has been completed in accordance with the terms of the permit and District rules and there is no outstanding balance owed to the District for unpaid permit fees, the District will release the financial assurance. Final inspection compliance includes, but is not limited to, confirmation that the site has been vegetated and stabilized to prevent erosion and sedimentation in accordance with District rules and stormwater management features have been constructed or installed and are functioning as designed. If the District does not inspect the project and make a determination of the project's compliance with the above criteria within 45 days of District receipt of written notification of project completion, the financial assurance will become immediately eligible for release.

(1) The District may return a portion of a financial assurance submitted to assure performance if the District finds that the entire amount is no longer required to ensure compliance with the permit conditions and District rules. Specific District

rules may include additional criteria under which partial return of a performance assurance may be authorized.

(b) A financial assurance submitted to satisfy the financial assurance requirement for more than one permit will be released by the District on written request of the principal if the conditions listed in either of the following paragraphs are met:

(1) Pursuant to an inspection by the District of the final project covered by the assurance, the District determines that the project has been completed in accordance with the terms of the permit and District rules and there is no outstanding balance owed to the District for unpaid permit fees. If the District does not inspect the project and make a determination of the project's compliance with the above criteria within 45 days of District receipt of written notification of final project completion, the financial assurance will be immediately eligible for release.

(2) The applicant submits a new financial assurance in a form and amount satisfactory to the District.