

**Side-by-Side Comparison of Proposed and Current MCWD Rules  
Rule 12. Financial Assurances**

This side-by-side comparison has been prepared to aid in review of the proposed rule changes. The existing and proposed rules can be found on the MCWD website, along with the Guidance on Proposed Revised Rules which provides a detailed explanation of all substantive changes: <https://minnehahacreek.org/permits/permitting-rule-revisions/>

<p><b>Key:</b>  <b>Blue &amp; bold font</b> - Key language that represents a substantive change from current language          Grey shading - Revised rule language is a relocation, consolidation, clarification, and/or simplification of the current language (i.e. housekeeping)  <i>Italics</i> - removed text</p>
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Revised Section	Revised Language	Current Section	Current Language
1	<p>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) use financial assurances supplied by permittees to limit the District’s use of general taxpayer funds to monitor land disturbing activity and provide for compliance with District rules and permits.</p>	1	<p>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.</p>
2	<p>FINANCIAL ASSURANCE REQUIREMENT.            a. The District may require a financial assurance instrument (performance bond, letter of credit or cash escrow deposit) as a condition of issuance of a permit under the District rules.            b. A financial assurance is required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.</p>	2	<p>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.</p>
3	<p>FINANCIAL ASSURANCE CRITERIA.            The required financial assurance amount will be set by the Board of Managers from time to time, by resolution. (The current financial assurance schedule may be obtained from the District office or website: <a href="http://www.minnehahacreek.org">www.minnehahacreek.org</a>.)            a. The financial assurance amount will be set to ensure against potential liabilities to the District, including but not limited to:            1. Application review, field inspection, monitoring, consultant services and related costs authorized under Minnesota Statutes §103D.345;            2. The cost to implement and maintain protective measures required by the permit, and otherwise to fulfill permit terms; and            3. The cost to remedy damage from permit noncompliance or for which the permittee otherwise is responsible.            b. The financial assurance instrument must be in a form acceptable to the District. A commercial assurance must be issued by a surety licensed to issue such assurances in Minnesota. (Templates may be obtained from the District office or website, <a href="http://www.minnehahacreek.org">www.minnehahacreek.org</a>.)            c. The financial assurance must be issued in favor of the District and conditioned on the permittee’s performance of the activities authorized in compliance with the terms and conditions of the permit and all applicable laws, including the District rules, and payment when due of applicable fees or other charges. If the District makes a claim against a financial assurance, the District may require that the permittee restore the full amount within 45 days.</p>	3	<p>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: <a href="http://www.minnehahacreek.org">www.minnehahacreek.org</a>.)            (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, <a href="http://www.minnehahacreek.org">www.minnehahacreek.org</a>.)            (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</p>

	<p>d. The financial assurance instrument will state that it will not be canceled without at least thirty (30) days prior written notice to the District by the surety.</p> <p>e. Financial assurance submittal is the responsibility of the permittee; however, the surety principal may be the permittee or the entity undertaking the authorized activity on the permittee's behalf.</p> <p>f. When the permittee provides a cash escrow to fulfill the financial assurance requirement, it will be accompanied by an executed escrow agreement in a form acceptable to the District. (A template agreement may be obtained from the District office or website, <a href="http://www.minnehahacreek.org">www.minnehahacreek.org</a>.)</p>		<p>event that the District makes a claim against a financial assurance, the District may require the full amount to be restored within 45 days.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
4	<p>FINANCIAL ASSURANCE RELEASE.</p> <p>a. On permittee's written notification of project completion, the District may inspect the project. If the authorized activity 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 or costs incurred, the District will release the financial assurance. Completion of the authorized activity includes, but is not limited to, site stabilization to prevent erosion and sedimentation and, as applicable, stormwater management features constructed or installed and functioning as designed. If the District does not inspect and determine compliance within 45 days of District receipt of notification, the financial assurance will be deemed released, <b>except that the District, by written notice to the permittee, may postpone the inspection period until seasonal conditions are suitable for inspection.</b></p> <p>b. Notwithstanding paragraph 4(a), the District will retain a multi-project financial assurance until all activities being performed under that assurance have been completed or the permittee has provided a substitute assurance.</p> <p>c. The District may reduce an outstanding financial assurance amount if, in its judgment, the entire amount is no longer required in accordance with paragraph 3(a), above.</p>	4	<p>FINANCIAL ASSURANCE RELEASE.</p> <p>(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.</p> <p>(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.</p> <p>(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:</p> <p>(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.</p> <p>(2) The applicant submits a new financial assurance in a form and amount satisfactory to the District.</p>