COON CREEK WATERSHED DISTRICT
Request for Board Action

MEETING DATE: June 13, 2016
AGENDA NUMBER: 19
ITEM: Statutory Requirements for District to Provide for Public Education

AGENDA: Discussion

ACTION REQUESTED
Receive requested staff report after review and discussion

BACKGROUND
At the May 9 meeting the Board requested a review of the legal requirements/mandates requiring the District to provide for Public Education. In short there are 1 statute, 2 rules and 1 permit that requires the District to develop and operate a public information, education and involvement program. In summary those are:

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<th>Type</th>
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<td>Statute</td>
<td>103B.227, subdivision 4</td>
<td>Metropolitan Surface Water Management Act</td>
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<td>Rule</td>
<td>Minnesota Rule 7090.1040</td>
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<td>Minnesota Rule 8410.0105 Subp 4</td>
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ISSUES/CONCERNS
Statute
103B.227 SUBD. 4. NEWSLETTER.
A watershed management organization shall publish and distribute at least one newsletter or other appropriate written communication each year to residents. The newsletter or other communication must explain the organization's water management programs and list the officers and telephone numbers.

Rules
MINNESOTA RULE 7090.1040 MS4 MINIMUM REQUIREMENTS.
Subpart 1. Storm water pollution prevention program required.
Owners or operators of permitted MS4's must have a storm water pollution prevention program to address environmental concerns related to storm water discharge. The program must address the following minimum measures in accordance with Code of Federal Regulations, title 40, section 122.34(b):

A. public education and outreach;
B. public participation/involvement;
C. illicit discharge detection and elimination;
D. construction site runoff control;
E. postconstruction runoff control; and
F. pollution prevention/good housekeeping.

Subp. 2. Record keeping.
Owners or operators required to have a storm water pollution prevention program under subpart 1 must maintain a copy of the program and make it available to the agency upon request.

Minnesota Rule 8410.0105 Subp 4. Information and education program.
Each plan must provide for an information and education program in consideration of the goals defined under part 8410.0080. The program must, at a minimum, include the purpose, targeted audiences, and actions. An annual communication must be distributed to residents of the organization in compliance with Minnesota Statutes, section 103B.227, subdivision 4.

MNR040000 PART III D. (1) STORMWATER POLLUTION PREVENTION PLAN, MINIMUM CONTROL MEASURES

1. Public Education and Outreach
Existing permittees shall continue to develop and implement a public education and outreach program that informs the public of the impact stormwater discharges have on water bodies and includes actions that citizens, businesses, and other local organizations can take to reduce the discharge of pollutants to stormwater.

The program shall include:

a. Distribution of educational materials and/or equivalent outreach focused on:
   (1) At least three (3) high priority stormwater-related issues to be emphasized for education and outreach during this permit term (e.g., specific TMDL reduction targets, changing local business practices, promoting adoption of residential BMPs, lake improvements through lake associations, etc.)
   (2) How to reduce pollution in stormwater discharges through proper management and disposal of pet waste, household chemicals, yard waste, and deicing materials
   (3) Illicit discharge recognition and reporting illicit discharges to the permittee

b. A program implementation plan that consists of the following:
   (1) Target audience(s)
(2) Measurable educational goals  
(3) Responsible department(s) in charge of overall plan implementation  
(4) Specific activities to be implemented to reach the measurable educational goals  
(5) Entities responsible for implementation of each specific activity  
(6) Activity implementation schedules  
(7) A description of any coordination with and/or use of other stormwater education programs being conducted in the area by other entities, if applicable  
(8) An annual evaluation component to measure the extent to which the established measurable educational goals are attained

c. Public Education and Outreach program documentation

The [District] shall document the following information as part of this program:  
(1) A description of the three (3) high priority stormwater-related issues the permittee will emphasize for education and outreach during this permit term  
(2) All information required under Part III.D.1.b  
(3) Any modifications made to the program as a result of the annual evaluation under Part III.D.1.b.(8)  
(4) Activities held, including dates, to reach measurable educational goals  
(5) Quantities and descriptions of educational materials distributed, including dates distributed

PRIOR DECISIONS
At the May 9 meeting the Board requested council to review the legal requirements for an educational program. The text of Ulrich’s memo follows.

OPTIONS
Receive report  
Review and discuss

RECOMMENDATION
1. Review and discuss staff report  
2. Receive staff report
ATTACHMENT: Michelle Ulrichs Report

The Coon Creek Watershed District (District) is statutorily required to have an educational program to implement its mandated natural resource goals and purposes. The following is a summary of the applicable statutory and rule provisions regarding the District’s educational mandate.

1. Statutes and Rules.

   A. Minnesota Statutes Chapter 103D.

      General Purposes and Powers.

      Minn. Stat. § 103D.201: The District’s general purposes is “[t]o 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 welfare and the provident use of the natural resources, the establishment of watershed districts is authorized under this chapter [103D].” (103D.201 (1)).

      Minn. Stat. § 103D.335: In carrying out its conservation purposes the District has the power “to perform all acts expressly authorized, and all other acts necessary and proper for the watershed district to carry out and exercise the powers expressly vested in it.” (103D.335 (1)(5)). In other enumerated powers, the District managers “may regulate, conserve, and control the use of water with the watershed district, (103D.335 (10)), “provide for sanitation and public health and regulate the use of streams, ditches, or watercourses to dispose of waste and prevent pollution” (103D.335 (16)). As a metropolitan watershed district, the District “has the duties and powers in section 103B.211” and “may regulate the use and development of land [under the conditions specified in section 103B.211 (1)]”, (103D.335 (23)(a),(b)). “The [District] managers may conduct studies and monitoring of water resources within the watershed district and implement water resource management programs.” (103D.335 (25)).

      Minn. Stat. § 103D.325: The legislature has authorized the District in section 103D.325 to hire employees to assist it in carrying out its statutory powers and duties.

   B. Minnesota Statutes Chapter 103B.

      As a metropolitan watershed district and watershed management organization as defined under Minnesota Statutes section 103B.205 (13), the District also has the powers and duties as provided in the Metropolitan Surface Water Management Act (Minn. Stat. §§ 103B.201-.255), and accompanying Rules (Minn. Rules 8410)).

      Minn. Stat. § 103B.201: The District is required to develop and implement water management programs to:
(1) protect, preserve, and use natural surface and groundwater storage and retention systems;
(2) minimize public capital expenditures needed to correct flooding and water quality problems;
(3) identify and plan for means to effectively protect and improve surface and groundwater quality;
(4) establish more uniform local policies and official controls for surface and groundwater management;
(5) prevent erosion of soil into surface water systems;
(6) promote groundwater recharge;
(7) protect and enhance fish and wildlife habitat and water recreational facilities; and
(8) secure the other benefits associated with the proper management of surface and groundwater.

Minn. Stat. § 103B.227 (4), Education and Outreach: The District is required under this provision to publish and communicate to residents information about its water management programs and management.

In carrying out these obligations the District is required to develop and implement a watershed management plan that complies with section 103B.231 and accompanying Rules (8410).

Minn. Stat. § 103B.231 (1)(a),(3)(a) requires the District to prepare and adopt a watershed management plan.

Minn. Stat. § 103B.231 (6)(a) sets forth the plan’s general contents. It provides: “The plan shall:
(1) describe the existing physical environment, land use, and development in the area and the environment, land use, and development proposed in existing local and metropolitan comprehensive plans;
(2) present information on the hydrologic system and its components ....;
(3) state objective and policies, including management principles, alternatives and modifications, water quality, and protection of natural characteristics;
(4) set forth a management plan, including the hydrologic and water quality conditions that will be sought and significant opportunities for improvement;
(5) describe the effect of the plan on existing drainage systems;
(6) identify high priority areas for wetland preservation ....;
(7) describe conflicts between the watershed plan and existing plans of local government units;
(8) set forth an implementation program consistent with the management plan, which includes a capital improvement program ....;
(9) set out procedures and timelines for amending the plan.”
The legislature in section 103B.231 (6)(b) has required BWSR by Rule to further define the standards and requirements for the watershed management plans. BWSR has defined these standards and requirements in Minnesota Rules 8410.

C. Minnesota Rules 8410.

Rule 8410.0105, subpart(4), Education and Outreach: As part of its goals and implementation actions set forth in its watershed management plan, the District is specifically required under Rule 8410.0105, subpart (4) to include an information and education program. Subpart (4) provides: “Each plan must provide for an information and education program in consideration of the goals defined under part 8410.0080. The program must, at a minimum, include the purpose, targeted audiences, and actions. An annual communication must be distributed to residents of the organization in compliance with Minnesota Statutes, section 103B.227, subdivision 4.”

As stated in BWSR’s 2014 SONAR regarding this provision, BWSR explains the importance of the educational component in the watershed districts’ water management responsibilities. BWSR states: “New to this subpart is a requirement to outline the information and education program in the plan. This new requirement recognizes that involvement and education of the public is a critical element in achieving the goals of the plan.”

Rule 8410.0150, subpart (3), Annual Reporting and Evaluation Requirements: As part of its required annual activity report the District must confirm compliance with educational component requirements, including a copy of the communication required by part 8410.0105, subpart 4.

Rule 8510.0180, Failure to Implement Plan: This part governs a watershed district’s failure to implement its plan, setting out criteria and standards for a “failure to implement” determination by BWSR. BWSR will consider whether “the organization is addressing its priority issues in the plan, is carrying out its implementation actions, has a current monitoring program to assess whether progress is being made on goals, and has made progress on goals for the priority issues.” (Minn. Rule 8410.0180, subpart (3a)). Therefore, the District is required to carry out the goals and implementation programs in its plan, which would include the information and education program component discussed above.

2. NPDES General Permit MNR040000 (MS4 General Permit).

The District as an MS4 is required under the above permit to prepare and implement a stormwater pollution prevention plan that contains six minimum control
measures. Public Education and Outreach is a required program for each of the six minimum control measures.

MS4s under the federal regulation have a general requirement to “distribute educational materials to the community or conduct equivalent outreach activities” on stormwater. (40 CFR § 122.34(b)(1)(i-ii)). Minnesota’s General Permit for the District as an MS4 includes detailed specifications for education and outreach, requiring education programs for each of the six minimum control measures, identifying the target audience, the goals for each audience, activities that will be used to reach the goals, implementation plans and performance measures. Minn. Gen. Permit 040000, Part III (D) (1). Further, the District as an MS4 must coordinate its education programs with appropriate community groups, nonprofits, lake conservation districts, other watershed districts and organization. Minn. Gen. Permit 040000, Part III (D)(1)(b)(4). The District must also conduct an annual duly noticed public meeting on its SWPPP, including the educational program and management component. Minn. Gen. Permit 040000, Part III (D)(2).

The detailed public education and outreach specifications in the District’s General Permit are set forth below.

**MNR04000 Part III (D)(1). Stormwater Pollution Prevention Plan**

**Minimum Control Measures**

1. **Public Education and Outreach**

   Existing permittees shall continue to develop and implement a public education and outreach program that informs the public of the impact stormwater discharges have on water bodies and includes actions that citizens, businesses, and other local organizations can take to **reduce** the discharge of pollutants to stormwater. The program shall include:

   a. Distribution of educational materials and/or equivalent outreach focused on:
      (1) At least three (3) high priority stormwater-related issues to be emphasized for education and outreach during this permit term (e.g., specific TMDL reduction targets, changing local business practices, promoting adoption of residential BMPs, lake improvements through lake associations, etc.)
      (2) How to **reduce** pollution in stormwater discharges through proper management and disposal of pet waste, household chemicals, yard waste, and deicing materials
      (3) **Illicit discharge** recognition and reporting **illicit discharges** to the **permittee**

   b. A program implementation plan that consists of the following:
      (1) Target audiences(s)
      (2) Measurable educational goals
      (3) Responsible department(s) in charge of overall plan implementation
      (4) Specific activities to be implemented to reach the measurable educational goals
      (5) Entities responsible for implementation of each specific activity
(6) Activity implementation schedules
(7) A description of any coordination with and/or use of other stormwater education programs being conducted in the area by other entities, if applicable
(8) An annual evaluation component to measure the extent to which the established Measurable educational goals are attained

c. Public Education and Outreach program documentation
The permittee shall document the following information as part of this program:
(1) A description of the three (3) high priority stormwater-related issues the permittee will emphasize for education and outreach during this permit term
(2) All information required under Part III (D)(1)(b)
(3) Any modifications made to the program as a result of the annual evaluation under Part III (D)(1)(b)(8)
(4) Activities held, including dates, to reach measurable educational goals
(5) Quantities and descriptions of educational materials distributed, including dates distributed