Nov 2, 2012

TO: Watershed Districts

FROM: Larry Kuseske, Chair, MAWD Resolutions/Policy Committee

RE: 2012 MAWD Proposed Resolutions Recommendations

Please find attached three proposed resolutions and Resolution/Policy Committee recommendations for consideration at our upcoming Annual Meeting. The MAWD Resolutions/Policy Committee will meet on Friday, November 30 at 8:00 am to hear from any of the Watershed District who proposed these resolutions or from anyone else interested in addressing the committee regarding the resolutions and corresponding recommendations.

We ask that your board of managers take the time to review these pending resolutions and committee recommendations and come prepared to discuss and vote on these at our Annual Meeting on November 30 & December 1, 2012.

Resolution #1: Revision to Adopted Rule Publication Requirement. Valley Branch WD

Resolution #2: Establishing a Ban on the Use of Coal Tar Sealants. Minnehaha Creek WD

Resolution #3: Licensing of Drivers of Motorized Watercraft. Minnehaha Creek WD

Resolution #1: Revision to Adopted Rule Publication Requirement. Minnehaha Creek WD.

Recommendation: The Committee recommends no action be taken on this resolution and that it be tabled. Presently, the BWSR interprets this statute to not require full publication of adopted rules, thus eliminating the need for this resolution.

Resolution #2: Establishing a Ban on the Use of Coal Tar Sealants. Minnehaha Creek WD

Recommendation: The Committee recommends that this resolution be forwarded to the full membership for discussion and action. Pending additional information being provided to the Committee prior to the membership meeting the Committee may provide a recommendation at the Annual Meeting.

Resolution #3: Licensing of Drivers of Motorized Watercraft. Minnehaha Creek WD

Recommendation: The committee does not believe the “licensing” of operators of motorized watercraft and the accompanying public safety issues are necessarily within
the purview of water management authorities. But, that being said, the Committee does believe there is a clear water management interest in controlling the spread of AIS in Minnesota. The Committee therefore recommends the adoption of an operator's certificate for all watercraft through the DNR which could be tied to a driver's license through the endorsement process similar to what is presently being done for firearms and snowmobile safety programs. The Committee proposes the following resolution for consideration:

AIS CERTIFICATION OF OPERATORS OF WATERCRAFT

WHEREAS, persons operating watercraft are not required in Minnesota to be Aquatic Invasive Species (AIS) trained and certified; and

WHEREAS, there is a need for a minimum of knowledge of AIS and associated boating responsibilities in operating watercraft in Minnesota; and

WHEREAS, requiring an AIS certification for watercraft operators will further the knowledge of boating laws and regulations related to AIS; and

WHEREAS, information about laws and practices regarding watercraft transport of aquatic invasive species (AIS) should be included in the training and testing materials required for certification, and this required education can further the State's objective of preventing the spread of AIS; and

WHEREAS, a revocable AIS operators certificate for egregious non-compliance of AIS statutes and rules will further enhance actions or behaviors in watercraft operations; and

WHEREAS, the on-line training and AIS certification boat-decal program scheduled to take effect in 2015 will affect all watercraft operators; and

WHEREAS, a program of training and testing for certification to operate watercraft can provide greater protection to the integrity of aquatic plant and animal communities throughout Minnesota.

NOW, THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts supports legislation that will require that all operators of non-commercial watercraft be AIS trained, tested, and certified.

If you have any questions regarding any of these resolutions we suggest you contact the respective watershed district that presented the proposal. Questions on any committee actions can be directed to Ray Bohn at the MAWD office. Thank you.
2012 MAWD Resolutions Background Information

Proposing District: Valley Branch Watershed District

Contact Name: John Hanson, District Engineer

Phone Number:
(day) 952-832-2622 (cell) 612-590-1785
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Email Address: jhanson@barr.com

Resolution Title (brief subject statement): Revision to Adopted Rule Publication Requirements

Factual points which provide background to, or a basis for, the issue addressed by Resolution:

1. Minnesota Statute 103D.341, Subdivision 1 requires all watershed districts to adopt rules.

2. Minnesota Statute 103D.341, Subdivision 2(c) states, “For each county affected by the watershed district, the managers must publish a notice of hearings and adopted rules in one or more legal newspapers published in the county and generally circulated in the watershed district.”

3. Publishing a complete set of adopted rules in a legal newspaper can be expensive.

4. Publishing a notice in the watershed district’s legal newspaper(s) and providing the draft rules on a website(s) and in hard copy upon request would save taxpayers money and would allow for public comment prior to the adoption of the rules.

5. Continuing to post the adopted rules to a watershed district’s website and providing paper copies upon request would be less expensive than publishing the adopted rules in the watershed district’s legal newspaper(s).

6. Board of Water and Soil (BWSR) staff have indicated that publishing the complete set of adopted rules in the legal newspaper(s) is not necessary. The opinion of BWSR staff is that, rather than publishing all of the adopted rules, watershed districts can publish notice that a hearing(s) was or were held and certain rules (type or relating to or summary) were adopted. However, Minnesota Statute 103D.341 should be clarified to be consistent with this interpretation.

Based upon the above facts, what is the proposed solution to the problem discussed above:
Revise Minnesota Statute 103D.341, Subd. 2(c) to allow alternatives to publishing a complete set of adopted rules in the legal newspaper (e.g., publish a list where the
adoption rules can be viewed/obtained (website, office address) or simply strike the adoption rules phrase from the statute as follows:

"For each county affected by the watershed district, the managers must publish a notice of hearings and adopted rules in one or more legal newspapers published in the county and generally circulated in the watershed district."

Likely Reaction by the Public or Other Governmental Units:
Indifference; however, newspaper publishers might oppose changing the publishing requirement because they would lose revenue.

This issue is of importance (Check one):
To just our District: ______
To just our Region: ______
To the entire State: ___X__
A RESOLUTION REGARDING PUBLISHING ADOPTED WATERSHED DISTRICT RULES

WHEREAS, Minnesota Statute 103D.341, Subdivision 1 requires all watershed districts to adopt rules; and

WHEREAS, Minnesota Statute 103D.341, Subdivision 2(c) states, "For each county affected by the watershed district, the managers must publish a notice of hearings and adopted rules in one or more legal newspapers published in the county and generally circulated in the watershed district;" and

WHEREAS, publishing a complete set of adopted rules in a legal newspaper can be expensive; and

WHEREAS, publishing a notice in a legal newspaper and providing the rules on a website and in hard copy upon request would save taxpayers money.

NOW THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts work to clarify and revise Minnesota Statute 103D.341 to allow alternatives for publishing adopted rules in one or more legal newspaper.

BY ROLL CALL VOTE OF THE VALLEY BRANCH WATERSHED DISTRICT BOARD, THIS RESOLUTION IS ADOPTED THIS 11TH DAY OF OCTOBER, 2012

[Signatures]

Attest: Jill M. Lucas, Secretary

David J. Bucheck, President
Resolution #2

2012 MAWD Resolutions Background Information

Proposing District: Minnehaha Creek Watershed District

Contact Name: Eric Evenson, Administrator

Phone Number: 952.641.4521 (day)
612.250.5514 (cell)

Email Address: eevenson@minnehahacreek.org

Resolution Title: Establishing a Ban on the Use of Coal Tar Sealants

Factual points which provide background to, or a basis for, the issue addressed by Resolutio:

1. Coal tar-based sealants contain a type of organic chemical compound known as Polycyclic Aromatic Hydrocarbons (PAHs); several PAHs are suspected human carcinogens.

2. Studies conducted by the Minnesota Pollution Control Agency, the Metropolitan Council, the U.S. Geological Survey, and the University of New Hampshire Stormwater Center have concluded that coal-tar based sealants are an important source of PAH contamination to waterway sediments and that they pose a risk to aquatic life.

3. PAH contamination is causing issues for local governments who are responsible for managing and disposing of dredged stormwater sediments because they are facing higher disposal costs.

4. Asphalt based sealants are a viable alternative and contain 1/65th the amount of PAHs.

Based upon the above facts, what is the proposed solution to the problem discussed above:
Seek legislation that prohibits the use of coal tar-based sealants in the State of Minnesota.

Likely Reaction by the Public or Other Governmental Units:
LGUs would support a ban as it would help reduce pollutants and maintenance costs. The public may inquire about the cost and availability of asphalt based products versus coal tar products.

This issue is of importance (Check one):

To just our District: ______ To just our Region: ______ To the entire State: X
ESTABLISHING A BAN ON THE USE OF COAL TAR SEALANTS

WHEREAS, the Minnesota Association of Watershed District (MAWD) finds that the State of Minnesota’s (State) water resources are a natural asset, which enhance the environmental, recreational, cultural and economic resources and contribute to the general health and welfare of the public; and

WHEREAS, the MAWD finds that polycyclic aromatic hydrocarbons (PAHs), which are contained in coal tar sealants, can be carried by stormwater and other runoff into the water resources of the State; and

WHEREAS, PAHs are an environmental concern because they are toxic to aquatic life, resulting in a loss of species and a decreased number of organisms; and

WHEREAS, environmental impacts can be minimized and pavements can be maintained by utilizing alternative products absent of PAHs; and

WHEREAS, the MAWD finds that regulating the amount of contaminants including PAHs contained in coal tar sealcoat products, entering the water resources of the State will improve and protect the water quality of the State and neighboring water resources; and

NOW, THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts supports legislation that will ban the use of coal tar based sealant products within the State of Minnesota, in order to protect, restore, and preserve the quality of its waters.
2012 MAWD Resolutions Background Information

Proposing District: Minnehaha Creek Watershed District

Contact Name: Eric Evenson, Administrator

Phone Number: 952.641.4521 (day)
              612.250.5514 (cell)

Email Address: eevenson@minnnehahacreek.org

Resolution Title: Licensing of Drivers of Motorized Watercraft

Factual points which provide background to, or a basis for, the issue addressed by Resolution:

1. Unlike persons operating motor vehicles, persons operating (i.e., driving) motorized watercraft are not required to be trained and licensed.
2. The lack of consistent minimum standards for knowledge of boating and skill in operating motorized watercraft compromises safety for the boating public.
3. A revocable license will further enhance public safety by removing those whose persons whose actions or behaviors in operating watercraft have endangered the boating public.
4. Information about laws and practices regarding watercraft transport of aquatic invasive species (AIS) can be included in the training and testing materials required for licensure, and this required education can further the State’s objective of slowing the spread of AIS.
5. The AIS boat certification decal scheduled to begin in 2015 will affect watercraft owners, but not all watercraft operators.

Based upon the above facts, what is the proposed solution to the problem discussed above:

Seek legislation that will require that operators of all motorized watercraft be licensed.

Likely Reaction by the Public or Other Governmental Units:

While residents need to have a license to operate a motor vehicle, there may be resistance to what is perceived as further governmental interference with the right to enjoy Minnesota’s waters. Watercraft dealers, boat rental businesses, and resort owners may claim that their livelihoods are threatened, as persons who are not or do not wish to become licensed will not be able to use their services as they are today. A public infrastructure for training, testing, and licensing would also need to be implemented.

This issue is of importance (Check one):

To just our District: _____
To just our Region: _____
To the entire State: X
LICENSING FOR OPERATORS OF MOTORIZED WATERCRAFT

WHEREAS, persons operating motorized watercraft are not required in Minnesota to be trained and licensed; and

WHEREAS, the lack of consistent minimum standards for knowledge of boating and skill in operating motorized watercraft compromises the safety of the boating public; and

WHEREAS, requiring a license will further the safety of the boating public by ensuring that operators of motorized watercraft have adequate knowledge of boating laws and regulations, and have adequate skill in operating watercraft; and

WHEREAS, a revocable license will further enhance public safety by removing those persons whose actions or behaviors in watercraft operations have endangered the boating public; and

WHEREAS, information about laws and practices regarding watercraft transport of aquatic invasive species (AIS) can be included in the training and testing materials required for licensure, and this required education can further the State’s objective of slowing the spread of AIS; and

WHEREAS, the on-line training and AIS certification boat-decal program scheduled to take effect in 2015 will affect only watercraft owners, but not all watercraft operators; and

WHEREAS, a program of training and testing for licensure to operate motorized watercraft can improve safety for the boating public and provide greater protection to the integrity of aquatic plant and animal communities throughout Minnesota,

NOW, THEREFORE, BE IT RESOLVED that the Minnesota Association of Watershed Districts supports legislation that will require that Minnesota residents who operate non-commercial motorized watercraft be trained, tested, and licensed.