

# FY 2018 Clean Water Fund Implementation Program Policy

*From the Board of Water and Soil Resources, State of Minnesota*

**Version:** FY2018  
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**Approval:** Board Resolution #17-57

## Policy Statement

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The Clean Water Fund was established to implement part of Article XI, Section 15, of the Minnesota Constitution, and Minnesota Statutes §114D with the purpose of protecting, enhancing, and restoring water quality in lakes, rivers, and streams and to protect groundwater and drinking water sources from degradation.

### Applicable Clean Water Fund Programs and Grants

- Projects and Practices
- Multi-purpose Drainage Management
- Buffer Cost Share
- Buffer Implementation

## Reason for the policy

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The purpose of this policy is to provide expectations for implementation activities conducted via the Board of Water and Soil Resources (BWSR) Clean Water Fund (CWF) implementation program.

BWSR will use grant agreements for assurance of deliverables and compliance with appropriate statutes, rules and established policies. Willful or negligent disregard of relevant statutes, rules and policies may lead to imposition of financial penalties or future sanctions on the grant recipient.

The FY 2018 Clean Water Fund Competitive Grants Request for Proposal (RFP) may identify more specific requirements or criteria when specified by statute, rule or appropriation language. BWSR's Grants Administration Manual (<http://www.bwsr.state.mn.us/grants/manual/>) provides the primary framework for local management of all state grants administered by BWSR.

# Program Requirements

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## 1. Local Governmental Unit Eligibility Criteria

Eligible applicants for competitive grants include local governments (counties, watershed districts, watershed management organizations, soil and water conservation districts, and cities) or local government joint power boards working under a current State approved and locally adopted local water management plan, comprehensive watershed management plan or soil and water conservation district (SWCD) comprehensive plan. Counties in the seven-county metropolitan area are eligible if they have adopted a county groundwater plan or county comprehensive plan that has been approved by the Metropolitan Council under Minn. Stat. Chapter 473. Cities in the seven-county metropolitan area are eligible if they have a water plan that has been approved by a watershed district or a watershed management organization as provided under Minn. Stat. 103B.235. Cities, including those outside of the seven-county metropolitan area, without such plans are encouraged to work with another eligible local government if interested in receiving grant funds. Plans must be current when the Board approves awards to be eligible to receive grant funds. Applicants must also be in compliance with all applicable federal, State, and local laws, policies, ordinances, rules, and regulations.

## 2. Match Requirements

A non-State match equal to at least 25% of the amount of Clean Water Funds requested and/or received is required, unless specified otherwise by Board action and/or included in a Request for Proposals. Match can be provided by a landowner, land occupier, local government or other non-State source and can be in the form of cash or the cash value of services or materials contributed to the accomplishment of grant objectives. Buffer Implementation grants are exempt from this requirement.

## 3. Eligible Activities

The primary purpose of activities funded with grants associated with the Clean Water Fund is to restore, protect, and enhance water quality. Eligible activities must be consistent with a comprehensive watershed management plan, county comprehensive local water management plan, soil and water conservation district comprehensive plan, metropolitan local water plan or metropolitan groundwater plan that has been State approved and locally adopted or an approved total maximum daily load study (TMDL), watershed restoration and protection strategy (WRAPs) document, surface water intake plan, or well head protection plan. Local governments may include programs and projects in their grant application that are derived from an eligible plan of another local government. BWSR may request documentation outlining the cooperation between the local government submitting the grant application and the local government that has adopted the plan.

Eligible activities can consist of structural practices and projects; non-structural practices, and measures, project support, and grant management and reporting. Technical and engineering assistance necessary to implement these activities are considered essential and are to be included in the total project or practice cost.

- 3.1 **Practice Standards.** All practices must be consistent with the NRCS Field Office Technical Guide (FOTG), MN Stormwater Manual, or be professionally accepted engineering or ecological practices. Design

standards for all practices must include specifications for operation and maintenance for the effective life of the given practice, including an inspection schedule and procedure.

**3.2 Effective Life.** All structural practices must be designed and maintained for a minimum effective life of ten years for best management practices and 25 years for capital improvement practices. The beginning date for a practice's effective life is the same date final payment is approved and the project is considered complete. Where questions arise under this section, the effective lifespan of structural practices and projects shall be defined by current and acceptable design standards or criteria as defined in Section 3.1.

**3.3 Project Assurances.** The grantee must provide assurances that the landowner or land occupier will keep the practice in place for its intended use for the expected lifespan of the practice. Such assurances may include easements, deed recordings, enforceable contracts, performance bonds, letters of credit, and termination or performance penalties. BWSR may allow replacement of a practice or project that does not comply with expected lifespan requirements with a practice or project that provides equivalent water quality benefits. See also the Projects Assurances section of the Grants Administration Manual.

**3.4 Operation, Maintenance and Inspections.** Identifying operation and maintenance activities specific to the installed practices is critical to ongoing performance of installed practices as well as to planning and scheduling those activities. An operation and maintenance plan must be prepared by designated technical staff for the life of the practice and be included with the design standards. An inspection schedule, procedure, and assured access to the practice site shall be included as a component of maintaining the effectiveness of the practice.

### **3.5 Livestock Waste Management Practices**

- a. The application of conservation practice components to improve water quality associated with livestock management systems that were constructed before **October 23, 2000** are eligible for funding.
- b. Eligible practices and project components must meet all applicable local, State, and federal standards and permitting requirements.
- c. Funded projects must be in compliance with standards in MN Rule Chapter 7020 upon completion.
- d. Eligible practices are limited to best management practices listed by the MN USDA-NRCS. ([http://www.nrcs.usda.gov/wps/portal/nrcs/detail/mn/programs/financial/eqip/?cid=nrcs142p2\\_023513](http://www.nrcs.usda.gov/wps/portal/nrcs/detail/mn/programs/financial/eqip/?cid=nrcs142p2_023513))
- e. Funding is limited to livestock operations that are not classified as a Concentrated Animal Feeding Operation (CAFO) and have less than 500 animal units (AUs), in accordance with MN Rule Chapter 7020.
- f. Only livestock operations registered with the Minnesota Pollution Control Agency in the Delta Database or its equivalent are eligible for funding.
- g. BWSR reserves the right to deny, postpone or cancel funding where financial penalties related to livestock waste management violations have been imposed on the operator.
- h. Feedlot Roof Structure is an eligible practice with the following payment limitation: The maximum grant for a feedlot roof structure is not to exceed \$100,000. Funding is not eligible for projects

already receiving flat rate payment equaling or exceeding this amount from the NRCS or other State grant funds.

- i. Feedlot relocation is an eligible practice, with the following conditions:
  - 1) The existing eligible feedlot must be permanently closed in accordance with the local and State requirements,
  - 2) Payment Limitation: The maximum grant for a feedlot relocation is not to exceed \$100,000. Funding is not eligible for projects already receiving flat rate payment equaling or exceeding this amount from the NRCS or other State grant funds.

### 3.6 Subsurface Sewage Treatment Systems

- a. Only identified imminent threat to public health systems (ITPHS) are eligible for grants funds, except as provided under b.
- b. Proposed community wastewater treatment systems involving multiple landowners are eligible for funding, but must be listed on the MPCA's Project Priority List (PPL) and have a Community Assessment Report (CAR) or facilities plan [Minn. Rule 7077.0272] developed prior to the application deadline. For community wastewater system applications that include ITPHS, systems that fail to protect groundwater are also eligible.
- c. In an unsewered area that is connecting into a sewer line to a municipal waste water treatment plant (WWTP), the costs associated with connecting the home to the sewer line is eligible for funding if the criteria in a. and b. above are met.

## 4. Technical and Administrative Expenses

Clean Water Funds may be used for actual technical and administrative expenses. Eligible expenses include the following activities: grant administration, site investigations and assessments, design and cost estimates, construction supervision, and construction inspections. Technical and administrative expenditures must be appropriately documented according to the Grants Administration Manual.

## 5. Non-Structural Practices and Measures

Non-structural practices and activities that supplement, or exceed current minimum State standards or procedures for protection, enhancement, and restoration of water quality in lakes, rivers, and streams or that protect groundwater from degradation are eligible. Non-structural vegetative practices must follow the Native Vegetation Establishment and Enhancement Guidelines.

[http://www.bwsr.state.mn.us/native\\_vegetation/seeding\\_guidelines.pdf](http://www.bwsr.state.mn.us/native_vegetation/seeding_guidelines.pdf) .

- 5.1. **In-lake or in-channel treatment.** Best management practices such as rough fish management, and alum treatments that have been identified as an implementation activity in a TMDL study or Watershed Restoration and Protection Strategies document are allowable. A feasibility study must be completed prior to applying for funding. Eligible costs apply only to initial costs for design and implementation. All subsequent applications and treatments under this subsection are considered to be Operations and Maintenance expenses that are a local responsibility.

5.2 **Minimum Buffer Width Requirements.** Minimum buffer widths must, at a minimum, follow applicable statutes, rules, or local official controls for the water of concern.

5.3 **Incentives.** Incentives may be used to encourage landowners to install or adopt land management practices that improve or protect water quality. Incentive payments and enhanced protection measures should be reasonable and justifiable, supported by grant recipient policy, consistent with prevailing local conditions, and must be accomplished using established standards. All incentivized practices or procedures must have a minimum duration of at least 3 years with a goal of ongoing landowner adoption. BWSR reserves the right to review and approve incentive payment rates established by grant recipient policy. Any projects proposing incentives for more than 3-years must be reviewed by BWSR staff and approved by the Executive Director prior to work plan approval.

5.4 **Project Support.** Eligible activities include community engagement, outreach, equipment and other activities, which directly support or supplement the goals and outcomes expected with the implementation of items identified in section 3.0 above. Refer to guidance within the Grants Administration Manual for Capital Equipment Purchases.

5.5 **Grant Management and Reporting.** All grant recipients are required to report on the outcomes, activities, and accomplishments of Clean Water Fund grants. The grant funds may be used for local grant management and reporting that are directly related to and necessary for implementing the project or activity.

Applicants who have previously received a grant from BWSR must be in compliance with BWSR requirements for grantee website and eLINK reporting before grant execution and payment.

## 6. Ineligible Activities

Projects or practices that address the following will not be considered:

- a. Stormwater conveyances that collect and move runoff, but do not provide water quality treatment benefit;
- b. Municipal wastewater treatment or drinking water supply facilities;
- c. Routine maintenance activities within the effective life of existing practices or projects;
- d. General maintenance and repair of capital equipment;
- e. Activities having the primary purpose of water quality monitoring or assessment; unless specifically allowed;
- f. Livestock Waste Management Practices: Practices and activities that are not listed in the USDA NRCS-EQIP docket or are not included in the USDA NRCS eFOTG;
- g. Subsurface Sewage Treatment Systems (SSTS):
  - 1) Small community wastewater treatment systems serving over 10,000 gallons per day with a soil treatment system, and
  - 2) A small community wastewater treatment system that discharges treated sewage effluent directly to surface waters without land treatment.

- h. Land acquisition or easement costs, however these costs can count toward the required match

## 7. Buffers and Alternative Practices

This section applies only for the installation of buffers and/or alternative practices as described under BWSR or SWCD policy required by Minnesota Statutes §103F.48 Riparian Protection and Water Quality Practices, also known as the Buffer Law, and specific to Clean Water Fund appropriation under Laws of Minnesota 2017, 1<sup>st</sup> Special Session, H. F. 707 4<sup>th</sup> Engrossment, Article 2, Sec. 7(o).

**7.1 Grant Match.** For this section only, non-State grant match identified in Section 2 is not required.

**7.2 Technical and Administrative Expenses.** For this section only, technical and administrative expenses identified in Section 4 are limited to up to twenty percent (20%) of the total grant. Amounts used must be documented as an actual expense. Remaining funds must be provided as cost share to achieve the purpose of these funds.

**7.3 Financial and Technical Assistance to Land Occupiers.** Financial assistance can be calculated by either a) the percent of the installation cost of a practice that may be provided to a land occupier for materials and labor necessary to install the practice or b) a flat rate for buffers. Flat rates serve as an alternative to actual costs documented by receipts or invoices.

### a) Percent of the installation cost

- 1) **Maximum percent based on receipts or invoices.** The maximum cost share rate utilizing state funds for installation of a practice is seventy-five percent (75%) of the installation cost, State and non-state funds combined may not exceed 100%.
- 2) **Non-state contributions.** A land occupier may provide the remainder of the local share of the implementation cost through in-kind services, or non-state funds. The district board shall determine whether charges for in-kind services and materials are practical and reasonable. Standard rates for in-kind services should be identified in the district's program policy.
- 3) **Local Rates.** Prior to receiving any applications from land occupiers, district boards may set different cost share rates up to the maximum identified in BWSR policy. These rates should be identified in the District's program policy.

### b) Flat rates

- 1) **Flat rates** may be used as an alternative to actual costs documented by receipts or invoices. When using flat rates a land occupier cannot accept any other state or federal funds for that practice.
- 2) **Buffers.** For buffers as required under 103F.48, the flat rate may be up to \$300 per acre to establish the vegetation. Species selection and acceptable seed source requirements must follow BWSR's Native Vegetation Establishment and Enhancement Guidelines. Native shrub plantings (amongst native grasses and flowers) for wildlife, fruit or nut production is allowed.

Allowable activities after establishment include haying, seed propagation, bio-energy production, and prescribed burning; if these occur outside of the nesting season of May 15 to August 1 and are included in the operation and maintenance plan. Alternative dates can be approved by the SWCD on a case-by-case basis for weed control, tree and scrub management or emergency repairs. Grazing after successful establishment is allowed with an approved grazing management plan (e.g. Prescribed Grazing practice standard 528).

**7.4 Cost Share Contract.** A contract between the District and land occupier(s) receiving state funds for buffers or alternative practices under BWSR or SWCD policy required by Minnesota Statutes §103F.48 is required to provide a legal standing to insure practices are installed and maintained according to approved standards and specifications. The required contract and procedures for using this contract are located in the Implementing Practices section of the BWSR Grants Administration Manual. Modifications to the conservation practice contract template may be made prior to execution with a land occupier and with prior approval from the District legal counsel and BWSR.

## 8. Technical Expertise

The grantee has the responsibility to ensure that the designated technical staff have the appropriate technical expertise, skills and training for their assigned role(s). See also the Technical Quality Assurances section of the Grants Administration Manual.

**8.1 Technical Assistance Provider.** Grantees must identify the technical assistance provider(s) for the practice or project and their credentials for providing this assistance. The technical assistance provider(s) must have appropriate credentials for practice investigation, design, and construction. Credentials can include conservation partnership Job Approval Authority (JAA), also known as technical approval authority; applicable professional licensure; reputable vendor with applicable expertise and liability coverage; or other applicable credentials, training, and/or experience.

**8.2 BWSR Review.** BWSR reserves the right to review the qualifications of all persons providing technical assistance and review the technical project design if a recognized standard is not available.

## 9. Practice or Project Construction and Sign-off

Grant recipients shall verify that the practice or project was properly installed and completed according to the plans and specifications, including technically approved modifications, prior to authorization for payment.

## 10. BWSR Grant Reporting and Reconciliation Requirements

BWSR staff is authorized to develop grant agreements, including requirements and processes for project outcomes reporting, closeouts, fiscal reconciliations, and grant verifications. All grantees must follow the Grants Administration Manual policy and guidance.

In the event there is a violation of the terms of the grant agreement, BWSR will enforce the grant agreement and evaluate appropriate actions, up to and including repayment of grant funds at a rate up to 150% of the grant agreement.

## History

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This policy was originally created in 2010 and is updated annually for each fiscal year of funding.

## Contact

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For Clean Water Programs: Marcey Westrick, Clean Water Coordinator