***Template - APO and Cover Letter***

***Before finalizing, delete the above text and any red-italicized instructions, and fill in the information required from the brackets. Delete any listed examples.***

[Today’s Date]

**CERTIFIED MAIL NO. [#\_\_\_\_\_\_\_\_\_\_\_]**

**RETURN RECEIPT REQUESTED**

[Landowner’s First name and Last name]

[Address]

[Or – If the landowner is a business: Executive Officer Title – e.g. CEO or President of a corporation or Manager of an LLC from Secretary of State’s Office website]

[Legal name of the business from Secretary of State’s Office website]

|  |
| --- |
| [Address] |

RE: Administrative Penalty Order

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

The Board of Water and Soil Resources (BWSR) is issuing the enclosed Administrative Penalty Order (APO) to [list the name of the landowner] (“Landowner”) for violations of the Riparian Protection and Water Quality Practices statute, Minn. Stat. § 103F.48, also known as the Buffer Law.

**Within 30 days after you receive this APO, you must:**

* Complete the corrective actions as described in this APO; and
* Provide notification and documentation to BWSR of the completion of the corrective actions~~]~~

Please read the APO carefully. You have a right to formally dispute this action within 30 days after receiving the APO. Instructions are in the RIGHT TO REVIEW section of the APO.

If you have questions or need assistance, contact BWSR staff \_\_\_\_\_\_\_\_\_\_by phone at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or by email at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Sincerely,

[Type name]

[Title]

Board of Water and Soil Resources

[XX:xx]

Enclosure[s] *Include APO AND Corrective Action Notice*

cc: \_\_\_\_\_\_\_\_\_\_\_Soil and Water Conservation District (w/enclosure[s])

BWSR: John Jaschke, David Weirens, Tom Gile, Travis Germundson (w/enclosure[s])

***Before finalizing, delete any red-italicized instructions, and fill in the information required from the brackets. Delete any listed examples.***

**STATE OF MINNESOTA**

**BOARD OF WATER AND SOIL RESOURCES**

**ADMINISTRATIVE PENALTY ORDER**

|  |  |  |
| --- | --- | --- |
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| --- |
| **[Landowner’s Name] (“Landowner”)** |

**(Same landowner as listed on the cover letter;** **do not list the CEO here.)** | **Address of Noncompliance: [Property Identification Number or Address & legal description of the Property] (“Property”)****[County]** |
|  |

This Administrative Penalty Order (APO) is issued by the Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. § 103B.101, subd. 12a for the violation listed below. This APO requires the Landowner owning the property listed above to take action to correct the violation.

\* \* \* \* \* \* \* \* \* \* \* \*

**VIOLATION[S]**

1. Minn. Stat. § 103F.48, **RIPARIAN PROTECTION AND WATER QUALITY PRACTICES.**

*Subd. 3. Riparian protection requirements on public waters and public drainage systems.*

1. *Except as provided in paragraph (b), landowners owning property adjacent to a water body identified and mapped on a buffer-protection map must maintain a buffer to protect the state’s water resources as follows:*
2. *for all public waters, the more restrictive of:*
3. *a 50-foot average width, 30-foot minimum width, continuous buffer of perennially rooted vegetation; or*

*(ii) the state shoreland standards and criteria adopted by the commissioner under section 103F.211; and*

1. *for public drainage systems established under chapter 103E, a 16.5-foot minimum width continuous buffer as provided in section 103E.021, subdivision 1. The buffer vegetation shall not impede future maintenance of the ditch.*

*(b) A landowner owning property adjacent to a water body identified in a buffer-protection map and whose property is used for cultivation farming may meet the requirements under paragraph (a) by adopting an alternative riparian water quality practice, or combination of structural, vegetative, and management practices, based on the Natural Resources Conservation Service Field Office Technical Guide, common alternative practices adopted and published by the board, other practices approved by the board, or practices based on local conditions approved by the local soil and water conservation district that are consistent with the Field Office Technical Guide, that provide water quality protection comparable to the buffer protection for the water body that the property abuts. Included in these practices are retention ponds and alternative measures that prevent overland flow to the water resource.*

*(c) The width of a buffer on public waters must be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level. The width of the buffer on public drainage systems must be measured as provided in section 103E.021, subdivision 1.*

**FINDINGS OF FACT**

*[Use the same facts as in the Corrective Action Notice, unless modifications are needed based on the response of Landowner or unless additional information became available after issuance of the Corrective Action Notice.]*

|  |
| --- |
| On [date], BWSR sent a Corrective Action Notice listing the corrective actions required to resolve the violations and gave a deadline of 11 months after the date of the Corrective Action Notice to complete the corrective actions. A copy of the Corrective Action Notice issued to the Landowner is attached to this APO. The 11 month deadline for completion of the corrective actions was \_\_\_\_\_\_\_\_\_\_. It has been determined that those actions have not been satisfied in accordance with the [Date] Corrective Action Notice. [Note - If the Landowner completed some of the corrective action, list the corrective actions that were not completed].  |

**\* \* \* \* \* \* \* \* \* \* \* \* \***

**CORRECTIVE ACTION REQUIRED**

Pursuant to Minn. Stat. § 103B.101, subd. 12a, the Landowner is required to correct all the violations listed in this APO. The Landowner must document to BWSR, within 30 days after receipt of this APO and in writing that the Landowner has taken the corrective actions listed below, unless the Landowner seeks review of this APO as described below (Right to Review).

[List the corrective actions that were included in the Corrective Action Notice or the corrective actions in the Corrective Action Notice that were not completed].

If the Landowner has any questions about the corrective actions required, please contact the BWSR staff person identified below for assistance.

**\* \* \* \* \* \* \* \* \* \* \* \* \***

**PENALTY:**

The Landowner is hereby assessed the following penalty for the violations cited above:

* **Initial Violation**
1. **$100 per parcel per month for six (6) months (180 days) following 30 days after receipt of this APO; and**
2. **$500 per parcel per month after the six (6) month (180 days) period in (a).**
* **Repeat Violation**

**(a) $100 per parcel per day for 180 days after issuance of the corrective action notice; and**

**(b) $500 per parcel per day after 180 days following the time period in (a).**

If the landowner performs and documents the corrective actions listed above to the satisfaction of

BWSR within 30 days after receipt of the APO, the penalty shall be: **FORGIVEN**

If the Landowner fails to provide documentation of completion of the corrective actions within 30 days after receipt of the APO, the penalty begins to accrue on the 31st day after receipt of this APO and will continue to accrue until the corrective actions have been completed, unless the Landowner submits a request to BWSR within 30 days after receipt of the APO for an extension of time to complete the corrective actions without penalty. The request must be in writing to BWSR, must explain the reasons why the corrective actions were not able to be completed within the 11 months provided under the Corrective Action Notice and why the corrective actions are not able to be completed within 30 days under this APO. BWSR will review the request and render a decision within 30 days of the request for an extension.

If the Landowner provides documentation of corrective actions, but BWSR determines that the corrective action was not satisfactory, then the penalty will not be forgiven and will begin to accrue on the 21st day after the Landowner receives notice of BWSR’s determination.

Payment of the penalty amount listed above shall be made monthly until the corrective actions have been completed. Payments shall be by certified check made payable to the Board of Water and Soil Resources. The certified checks should be mailed to BWSR at 520 Lafayette Road North, St. Paul, Minnesota 55155. To make an electronic payment, contact BWSR Fiscal Services at \_\_\_\_\_\_\_\_\_\_.

**\* \* \* \* \* \* \* \* \* \* \* \* \***

**RIGHT TO REVIEW**

Pursuant to Minn. Stat. § 103F.48, subd. 9, the Landowner may appeal the APO to BWSR within 30 days after receipt of the APO. The following description is intended only to aid the Landowner’s understanding of the review process.

The Landowner has a right to appeal the terms and conditions of the APO. To obtain review, the following steps must be taken within 30 days after receipt of this APO:

1. The Landowner must request review within 30 days after receipt of this APO. The Landowner must ensure that any review request is received by BWSR before 4:30 p.m. on the last day of the 30-day period. The 30-day period begins the first calendar day after the Landowner receives the APO or corrective action determination. If the 30-day period ends on a weekend or holiday, it shall be extended to 4:30 p.m. on the next day BWSR is open for business;

As the result of a request to review the Landowner’s corrective action BWSR will make a determination if the steps have resolved the non-compliance. If non-compliance has not been fully resolved the landowner may request additional review within 20 days if additional actions have taken place. The Landowner must ensure that any review request is received by BWSR before 4:30 p.m. on the last day of the 20-day period. The 20-day period begins the first calendar day after the Landowner receives the BWSR determination. If the 20-day period ends on a weekend or holiday, it shall be extended to 4:30 p.m. on the next day BWSR is open for business;

1. the appeal must be in writing;
2. the appeal may be sent by first class U.S. mail or electronically or delivered in person to the executive director of BWSR;
3. the appeal must include a copy of the APO that is being appealed, a description of the basis for the appeal, and include any supporting evidence and facts upon which the Landowner relies;
4. the Landowner must send or deliver the request to BWSR at the following address: Attention Executive Director, Board of Water and Soil Resources, 520 Lafayette Road North, St. Paul, Minnesota 55155-4194; if sent electronically, the appeal must be sent to: John.Jaschke@state.mn.us

The Executive Director of BWSR will review the request and supporting evidence and issue a decision within 60 days of receipt of the appeal. The Executive Director’s decision is appealable directly to the Minnesota Court of Appeals pursuant to Minn. Stat. §§ 14.63 to 14.69.

This APO becomes a final order after 30 days unless the Landowner requests review as provided above. If the Landowner fails to comply with the APO, BWSR may file the APO in district court as a final judgment against the Landowner without further notice or additional proceedings. BWSR may enforce and collect the judgment or a district court order against the Landowner and require payment of unpaid penalties, monetary damages, attorney fees, costs, and interest. The Attorney General may petition the district court for entry of the final order as an order of the district court that may be enforced against the Landowner in the same manner as a judgment of the district court.

*Keep the paragraph above with signature.*

**STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES**

|  |  |  |
| --- | --- | --- |
| Dated at Saint Paul, Minnesota, this [date] of [month], [year] |  | John JaschkeExecutive Director  |
| *Date signed* |  |

**CERTIFIED MAIL NO. [#\_\_\_\_\_\_\_\_\_\_\_\_]**

**RETURN RECEIPT REQUESTED**

Address questions [and submittals requested above] to:

[Name]

Buffer and Soil Loss Specialist

Board of Water and Soil Resources

[Address]

[Phone Number]

[Email address]