

Vermillion River Watershed Joint Powers Organization Rules

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SECTION 1.00 AUTHORITY AND SCOPE

These Rules are adopted pursuant to Minn. Stat. chs. 103B and 103D, and the Vermillion River Watershed Joint Powers Organization (VRWJPO) Plan and Standards, as amended from time to time. These Rules shall apply if the VRWJPO has authority under the conditions set forth in Minn. Stat. § 103B.211, Subd. 1(a)(3):

- A. The LGU exercising planning and zoning authority over the land under Minn. Stat. §§ 366.10 to 366.19, 394.21 to 394.37 or 462.351 to 462.364, does not have a local water management plan approved and adopted in accordance with the requirements of Minn. Stat. § 103B.235 or has not adopted the implementation program described in the plan;
- B. An application to the LGU for a permit for the use and development of land requires an amendment to or variance from the adopted local water management plan or implementation program of the LGU; or
- C. The LGU has authorized the VRWJPO to require permits for the use and development of land.

SECTION 2.00 POLICY STATEMENT

The Policy Statement as set forth in the VRWJPO Watershed Plan Standards is incorporated herein by reference as may be amended from time to time.

SECTION 3.00 DEFINITIONS

Unless the context clearly indicates otherwise, the words and phrases described in the definitions section of the [Standards](#) shall have the meanings ascribed to them in that section. Terms used in the Standards shall have the same definition as provided in Minn. Stat. § Chs. 103B and 103D and Minn. R. Ch. 8410 as may be amended, and if not defined there, shall have common usage meaning. For purposes of the Standards, the words “must” and “shall” are mandatory and the word “may” is permissive.

SECTION 4.00 PROCEDURAL REQUIREMENTS

4.01 Permit Required

- A. It is unlawful for any person to undertake any activity governed by these Rules without the appropriate permit from the VRWJPO.
- B. Any person undertaking an activity for which a permit is required by these Rules shall submit a permit application to the VRWJPO on forms provided by the VRWJPO. Applicants shall provide all information as required, including: (1) the permit

application; (2) design data; (3) plans; (4) specifications; and (5) such other information and exhibits as may be required by the VRWJPO.

4.02 Action by the VRWJPO

The VRWJPO shall review a permit application and supporting documents to determine whether the application is complete. The VRWJPO shall approve or deny an application containing all required information, exhibits and fees in accordance with Minn. Stat. § 15.99.

4.03 Conformity with Subdivision Plan

The VRWJPO may consider the criteria for subdivisions in these Rules before preliminary approval is received from the municipality or county. The preliminary and final subdivision approval obtained from the municipality and county shall be consistent with the conditions of the approved permit.

4.04 Notification

No formal notification will be provided by the VRWJPO to nearby landowners for permit applications within VRWJPO jurisdiction. In the case of variances or development greater than 40 acres in size, the VRWJPO shall mail notice of the permit application to the owners of land within a distance specified by the VRWJPO of the described activity, at least 14 days prior to the scheduled meeting date of the VRWJPO at which the application will be considered. The names and addresses of the owners to be notified shall be furnished to the VRWJPO with the permit application. Neither the failure to give mailed notice to any owner nor any defect in the notice shall invalidate an action by the VRWJPO on a permit application.

4.05 Conditions

A permit may be approved subject to reasonable conditions to assure compliance with these Rules. The conditions include, but are not limited to, a requirement that the permittee and owner, including any mortgagee, enter into an agreement with and in a form acceptable to the VRWJPO to: (a) specify responsibility for the construction and future maintenance of approved structures; (b) document other continuing obligations of the permittee or owner; (c) grant reasonable access to the proper authorities for inspection, monitoring, and enforcement purposes; (d) affirm that the VRWJPO or other political subdivisions can require or perform necessary repairs or reconstruction of such structures; (e) require indemnification of the VRWJPO for claims arising from issuance of the permit or construction and use of the approved structures; and (f) reimburse the reasonable costs incurred to enforce the agreement. Permits and agreements may be filed for record to provide notice of the conditions and continuing obligations.

4.06 Issuance of Permits

The VRWJPO will issue a permit only after the applicant has: (a) satisfied all requirements of these Rules; (b) paid all required fees; and (c) provided any required security. No activity governed by these Rules may be initiated until the VRWJPO grants the permit. When the VRWJPO issues a permit where plans are required, the VRWJPO shall endorse in writing or stamp the plans and specifications as “approved.” All activity under the permit shall be done in accordance with the approved plans and specifications, one set of which shall be kept on the site of the activity at all times while the authorized work is in progress.

4.07 Expiration

A permit shall expire and become null and void if the approved activity is not commenced within one year from date of approval by the VRWJPO, or if the approved activity is suspended or abandoned for a period of one year from the date the activity originally commenced. Before an activity delayed for one year or longer can recommence, the permit must be renewed. An application for renewal of a permit must be in writing and state the reasons for the renewal. Any plan changes and required fees must be included with the renewed application. No permit will be renewed until the applicant pays all unpaid fees and corrects any outstanding violations. The VRWJPO shall consider the application for renewal on the basis of the Rules in effect on the date the application is being considered for renewal.

Any permittee may apply for an extension of time to commence the approved activity under an unexpired permit when the permittee is unable to commence the activity within the time required by these Rules. An application for an extension of a permit must be in writing and state the reasons for the extension. Any plan changes and required fees must be included with the application. No extension will be considered until all unpaid fees and correction of any outstanding violation. The application for an extension must be received by the VRWJPO at least 60 days prior to the permit’s expiration. The VRWJPO shall consider the application for an extension on the basis of the Rules in effect on the date the application is being considered. The VRWJPO may extend the time for commencing the approved activity for a period not exceeding one year upon demonstration of good cause for the delay.

4.08 Validity

Issuance of a permit based on plans, specifications, or other data, shall not prevent the VRWJPO from thereafter requiring the correction of errors in the approved plans, specifications, or other data, or from preventing any activity being carried on thereunder in violation of these Rules.

4.09 Modifications

The permittee shall not modify the approved activity, plans, specifications, or other data on file with the VRWJPO without the prior written approval of the VRWJPO.

4.10 Inspection and Monitoring

After issuance of a permit, the VRWJPO may perform such field inspections and monitoring of the approved activity as the VRWJPO deems necessary to determine compliance with the conditions of the permit and these Rules. Any portion of the activity not in compliance shall be promptly corrected by the permittee. In applying for a permit, the applicant consents to entry upon the land for field inspections and monitoring, or for performing any work necessary to bring the activity into compliance at the permittee's expense. The cost to the VRWJPO for field inspections and monitoring, including services of consultants, shall be payable by the permittee as provided in section 17.00 below.

4.11 Certificate of Completion

The VRWJPO shall authorize the release of any required security upon the VRWJPO verifying completion of the activity in accordance with the approved plans and conditions of the permit. As-built plans of final grades and public infrastructure, and copies of documents, with evidence of recording where appropriate, that establish easements, or provide for maintenance of structures, required by the permit shall be filed with the VRWJPO before completion can be certified and any security released. All temporary synthetic and structural erosion prevention and sediment control BMPs (such as silt fence) must be removed following approval of the certificate of completion before the final balance of securities can be released. Certification will not occur until all fees are paid and any outstanding violations are corrected. If the VRWJPO fails to issue a certificate of completion within 60 days following submission that the forgoing conditions have been met, the activity shall be deemed complete and any surety shall be released.

4.12 Permit Transfers

A permit issued pursuant to these Rules shall not be transferable to a new owner. The new owner must apply for a permit in accordance with these Rules.

4.13 Other Permits

- A. The applicant shall secure all environmental permits and approvals required by other governmental entities and meet all requirements therein.
- B. Issuance of a permit required by these Rules shall not be deemed to exclude the necessity of obtaining other required permits or approvals. Compliance with the provisions of these Rules shall not relieve any person of the need to comply with any other applicable rules, regulations, or laws.

4.14 Duty to Comply with Permit Conditions

The permittee shall comply with all conditions stated in any permit issued by the VRWJPO under these Rules. Failure of the permittee to comply is a violation of these Rules and is subject to the penalties provided in these Rules.

4.15 Denial and Right to Appeal

If the VRWJPO denies a permit to an applicant, the applicant shall be notified of such denial in writing. The VRWJPO shall serve the denial by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed to be complete upon mailing. The applicant may appeal the permit denial by filing a request for a hearing. The hearing request shall be in writing stating the grounds for the appeal and served on the VRWJPB by personal service or certified mail within 10 VRWJPO working days of the service of the permit denial, exclusive of the day of service. Following timely service of a request for a hearing, the VRWJPB shall set a time and place for the hearing pursuant to section 16.00.

4.16 Administration of Rules

The VRWJPO Administrator(s) shall administer and enforce these Rules under the direction and control of, and subject to, the powers expressly reserved to the VRWJPB. The VRWJPO shall review, revise, and update these Rules as necessary.

SECTION 5.00 FLOODPLAIN ALTERATION RULE

5.01 Policy, Regulation, and Criteria

The policy, regulation, and criteria for floodplain alterations, as set forth in the [VRWJPO Watershed Plan Standards](#) are incorporated herein by reference, as may be amended from time to time.

5.02 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Site plan showing boundary lines, delineation and existing elevation contours of the work area, ordinary high water level, and 100-year critical flood elevation. All elevations shall be referenced to NGVD, 1929 datum, or shall be corrected to reference said datum.
- B. Grading plan showing any proposed elevation changes.
- C. Draft preliminary plat of any proposed subdivision.

- D. Determination by a registered professional engineer of the 100-year critical flood elevation before and after the proposed activity.
- E. Computation of the change in flood storage capacity as a result of the proposed alteration or fill.
- F. Erosion control and sediment plan, or SWPPP, which complies with section 8.00 below.
- G. Soil boring results if available.

SECTION 6.00 WETLAND ALTERATION RULE

6.01 Policy, Regulation, and Criteria

The policy, regulation, and criteria for wetland alterations, as set forth in the [VRWJPO Watershed Plan Standards](#) are incorporated herein by reference, as may be amended from time to time.

SECTION 7.00 BUFFER RULE

7.01 Policy, Regulation, Criteria and Exceptions

The policy, regulation, criteria, and exceptions for buffers, as set forth in the [VRWJPO Watershed Plan Standards](#) are incorporated herein by reference, as may be amended from time to time.

7.02 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Construction plans and specifications showing the delineated wetland edge, buffer strip location(s), the location of buffer monuments and the location of any temporary fencing required.
- B. A narrative description of each buffer strip identifying its current condition.
- C. A legal description and drawing of each buffer strip, signed forms for conservation easements, or record of an administrative land split, preliminary plat or final plat demonstrating that the buffer area is contained in a dedicated out-lot.
- D. A landscaping and vegetation management plan according to section 7.04(C) below, including a compliance monitoring and certification plan and a cost estimate for buffer strips with unacceptable vegetation, as defined by section 7.04(B) below, or where grading in a buffer strip is proposed.

SECTION 8.00 EROSION AND SEDIMENT CONTROL RULE

8.01 Policy, Regulation, Criteria, and Exceptions

The policy, regulation, criteria, and exceptions for erosion and sediment control, as set forth in the [VRWJPO Watershed Plan Standards](#) are incorporated herein by reference, as may be amended from time to time.

8.02 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17" for full plan sets):

- A. Property lines and delineation of lands under ownership of the applicant.
- B. General grading plans or topographic map with elevation data (contours).
- C. Plans for all proposed runoff, erosion and sediment controls, and temporary and permanent soil stabilization measures, and any applicable specifications for erosion and sediment control materials (i.e., Erosion and Sediment Control Plan or plan sheets).
- D. Detailed schedules for implementation of the land disturbing activity, the erosion and sediment controls, and soil stabilization measures, as well as schedules for monitoring, maintaining, and removing the erosion and sediment controls and soil stabilization measures (i.e., a SWPPP).

SECTION 9.00 STORMWATER MANAGEMENT RULE

9.01 Policy, Regulation, Criteria, Exceptions, Maintenance, Easements, Covenants, Waivers, and Trading

The policy, regulation, criteria, exceptions, maintenance, easements, covenants, waivers, and trading for stormwater management, as set forth in the [VRWJPO Watershed Plan Standards](#) are incorporated herein by reference, as may be amended from time to time.

9.02 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Property lines and delineation of lands under ownership of the applicant.

- B. Delineation of the subwatershed contributing runoff from off-site, proposed, and existing subwatersheds on-site, emergency overflows, and watercourses.
- C. Proposed and existing stormwater facilities location, alignment, and elevation.
- D. Delineation of existing on-site wetlands, marsh, buffer, shoreland, and floodplain areas.
- E. For applications proposing infiltration as a volume control BMP stormwater management practice, identification, description, permeability, and approximate delineation of site soils, at the location of the proposed infiltration area in both existing and proposed as-developed condition. Soil boring log information, if available, shall also be provided upon request.
- F. Existing and proposed ordinary high and 100-year water elevations on-site.
- G. Existing and proposed site contour elevations at 2 foot intervals, referenced to vertical datum NGVD, 1929 datum or D North American 1983/NGVD88 datum with reference made to the datum used in the plans.
- H. Construction plans and specifications of all proposed stormwater management facilities, including design details for outlet controls.
- I. Vegetation plans, including planting and maintenance details, for all vegetated BMPs.
- J. Runoff rate analysis for the 1-year, 10-year, and 100-year critical storm events, existing and proposed.
- K. Runoff volume analysis for the 2-year 24-hour storm event, existing and proposed.
- L. All hydrologic, water quality, and hydraulic, computations made in designing the proposed stormwater management facilities (or copies of hydrologic and hydraulic modeling output files).
- M. Narrative addressing incorporation of temperature control BMPs into the site design when required as part of criteria in section 8.04(C) below.
- N. Delineation of any ponding, flowage or drainage easements, or other property interests, to be dedicated for stormwater management purposes.
- O. Legal description and drawing of any conservation easements proposed to be dedicated for stormwater management purposes, such as natural area credit for volume control.
- P. An existing and proposed topographic map showing contours on and adjacent to the land, property lines, all hydrologic features, the proposed land disturbing activities,

and the locations of all runoff, erosion and sediment controls, and soil stabilization measures.

SECTION 10.00 DRAINAGE ALTERATION RULE

10.01 Policy, Regulation, Criteria, and Exceptions

The policy, regulation, criteria, and exceptions for drainage alterations, as set forth in the [VRWJPO Watershed Plan Standards](#) are incorporated herein by reference, as may be amended from time to time.

10.02 Required Exhibits

The following exhibits shall accompany the permit application (one set, minimum size of 11" x 17"):

- A. Map showing location of proposed alteration and tributary area.
- B. Existing and proposed cross sections and profile of affected drainage area.
- C. Description of bridges or culverts required.
- D. Narrative and calculations verifying compliance with the following criteria.

SECTION 11.00 AGRICULTURAL RULE

The agricultural standard approach, as set forth in the [VRWJPO Watershed Plan Standards](#) are incorporated herein by reference, as may be amended from time to time.

SECTION 12.00 SECURITY

12.01 Policy

It is the policy of the VRWJPO to protect and conserve water resources by requiring financial security to assure compliance with these Rules.

12.02 Requirement

The VRWJPO may require security as a condition to the issuance of a permit under these Rules.

12.03 Amount

A rate schedule of security amounts shall be set by the VRWJPB at least once every three years in the amounts the VRWJPB deems necessary to cover the following potential liabilities to the resources of the VRWJPO:

- A. Post permit field inspection, monitoring, and related fees;
- B. The cost of maintaining and implementing erosion and sediment control required by the permit;
- C. The cost of completing buffer strip landscaping in accordance with section 7.00; and
- D. The cost of remedying damage resulting from noncompliance with the permit, these Rules, or for which the permittee is otherwise responsible.

12.04 Form and Conditions

- A. The applicant shall provide security through one of the following mechanisms:
 - 1. Single Access Cash Account. A single access cash account at a financial institution acceptable to the VRWJPO and the VRWJPO's attorney.
 - 2. Letter of Credit. An irrevocable letter of credit from a financial institution acceptable to the VRWJPO and the VRWJPO's attorney.
- B. The security shall be in favor of the VRWJPO and conditioned upon the applicant's performance of the authorized activity in compliance with the permit and applicable laws, these Rules, and the payment when due of any fees or other charges authorized or required by the permit, and these Rules.
- C. The security shall be issued for a minimum term of 1 year. Security with a shorter term may be deposited with the VRWJPO provided it is replaced at least 30 days before its expiration.
- D. The VRWJPO is authorized to make a claim or draw against the security after any default by the applicant under the permit or these Rules, or if the applicant fails to replace any security at least 30 days before its expiration. The VRWJPO shall notify the applicant in writing when security funds are being withdrawn and shall state the reasons for such withdrawal.

12.05 Release

Any security required by these Rules shall be released by the VRWJPO upon receipt of the certificate of completion as required by section 4.12 above.

SECTION 13.00 VARIANCES

13.01 Variances Allowed

The VRWJPO may grant variances from the literal provisions of these Rules. A variance shall only be granted when in harmony with the general purpose and intent of the Rules in cases where strict enforcement of the Rules will cause undue hardship, and when the terms of the variance are consistent with the VRWJPO Watershed Plan and Minn. Stat. ch. 103B.

13.02 Procedure for Requesting Variance

- A. Application for Variance. A variance application shall be submitted by the property owner to the VRWJPO on forms provided by the VRWJPO. Applicants shall provide all information as required for the administration of these Rules.
- B. Notification. Written notice of the variance application shall be sent to property owners of record within 500 feet of the affected property, the town board of the township wherein the variance is proposed, and the governing body of any city of which the incorporated limits lie within two miles of the proposed variance. The written notice shall be given not less than 14 days prior to the date of the meeting at which the variance application will be considered by the VRWJPB. The failure of any person to receive such notification shall not invalidate the proceedings.
- C. Factors Required for Approval. A variance may be granted provided that:
 - 1. The conditions causing the demonstrated hardship are unique to the property and were not caused by the action of the applicant;
 - 2. The granting of the variance will not be contrary to the public interest or damaging to the rights of other persons or to property values in the vicinity; and
 - 3. The property owner would have no reasonable use of the land without the variance. Economic considerations alone shall not constitute a hardship if a reasonable use for the land exists under the terms of these Rules.
- D. Conditions. The VRWJPB may impose conditions in granting the variance to ensure compliance and to protect the public health, safety, or welfare. Each violation of any

condition set forth in the variance shall be a separate violation of these Rules subject to enforcement and shall be sufficient grounds for terminating the variance.

- E. Term. A variance shall expire and become null and void if the approved activity is not commenced within one year from date of approval by the VRWJPB, or if the approved activity is suspended or abandoned for a period of one year from the date the activity originally commenced.
- F. Denial of Variance. No application for a variance, which has been denied wholly or in part, shall be resubmitted for a period of 6 months from the date of said denial, except on the grounds of relevant new evidence or proof of a significant change of conditions.
- G. Appeal. Any person aggrieved by the decision of the VRWJPB may appeal the decision to any court with competent jurisdiction.

SECTION 14.00 VIOLATIONS

For violations of these Rules, the VRWJPO may take the following actions: issuance of a warning notice; issuance of a notice of violation; issuance of a citation or complaint; issuance of a cease and desist order; suspension, summary suspension, or revocation of a permit issued under these Rules; execution of a stipulation agreement; or commencement of other civil proceedings.

14.01 Warning Notice

The VRWJPO may issue a warning notice to any person alleged to have committed a violation of these Rules. A warning notice shall serve to place the person on notice that compliance with specified Rule requirements must occur to avoid additional enforcement actions. Service of the warning notice shall be made by first class mail or by personal service. The warning notice shall contain:

- A. A list of violations, including the Rule(s) violated, the factual basis for the violations and the date(s) of the violations.
- B. The specific actions required to be taken by the person to correct the violations and the timeframes within which the corrections are required to be made.
- C. A general description of the additional administrative and judicial enforcement actions that could be pursued by the VRWJPO if the alleged violations are not satisfactorily corrected.

14.02 Notice of Violation

The VRWJPO may issue a notice of violation (NOV) to any person alleged to have committed a violation of these Rules. A NOV shall serve to place the person on notice that compliance with specified Rule requirements must occur to avoid additional enforcement actions. Service of the NOV shall be made by certified mail or by personal service. The NOV shall contain:

- A. Findings of fact with corresponding conclusions of law which describe the alleged violations and the corresponding Rules which are allegedly violated.
- B. Orders for corrective actions, which describe specifically how each alleged violation must be corrected and the timeframes within which the corrections are required to be made.
- C. Notice of further action, which describes in general terms, the additional administrative and judicial enforcement actions that could be pursued by the VRWJPO if the alleged violations are not satisfactorily corrected.

14.03 Citation

Any person who fails to comply with the provisions of these Rules is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

An authorized representative of the VRWJPO shall have the power to issue citations for violations of this ordinance, but shall not be permitted to physically arrest or take into custody any violator.

- A. **ISSUANCE OF THE CITATION.** Citations shall be issued to the person alleged to have committed the violation (alleged violator) either by personal service or by certified mail. In the case of a public, private, or municipal corporation, the citation shall be issued to any officer or agent with express or implied authorization to accept such issuance.
- B. **NOTICE OF CITATION.** Citations shall be made out in quadruplicate (4). One copy shall be issued to the alleged violator; one copy shall be filed with the VRWJPO; one copy shall be filed with the Dakota County Attorney's Office; and one copy shall be filed with the Dakota County District Court, First Judicial District.
- C. **FORM OF CITATION.** Citations shall be on such form(s) as approved by the VRWJPO and shall contain at least the following:
 - 1. The name and address of the alleged violator and when known, the owner or person in charge of the premises at which the violation occurred;
 - 2. The date, time (if known) and place of violation;

3. A short description of the violation followed by reference to the section of this ordinance violated;
 4. The name of the person issuing the citation;
 5. The date, time, and place at which the alleged violator shall appear in court and notice that if such person does not appear, a warrant may be issued for such person's arrest; and
- D. COURT APPEARANCE. The alleged violator shall appear at the place and on the date and time specified in the citation and either:
1. Plead guilty to the citation and meet the requirements of the sentence imposed by the court; or
 2. Plead not guilty to the citation and schedule a court date for further hearing or trial.
- E. FAILURE TO APPEAR ON THE CITATION. If the alleged violator does not appear at the place and on the date and time specified on the citation, the court may issue a warrant for the person's arrest.
- F. COMPLAINT. A complaint may be issued in lieu of a citation as determined by the Dakota County Attorney's Office.
- G. AIDING AND ABETTING. As set forth in Minn. Stat. § 609.05, a person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime. A person liable for such crime is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended. A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime and thereafter abandons that purpose and makes a reasonable effort to prevent the commission of the crime prior to its commission is not liable if the crime is thereafter committed.

A person liable under this section may be charged with and convicted of the crime although the person who directly committed the crime has not been convicted, or has been convicted of some other degree of the crime or of some other crime based on the same act, or if the person is a juvenile who has not been found delinquent for the act. For purposes of this section, a crime also includes an act committed by a juvenile that would be a crime if committed by an adult.

14.04 Cease and Desist Orders

Cease and desist orders may be issued when the VRWJPO has probable cause that an activity regulated by these Rules is being or has been conducted without a permit or in violation of a permit. When work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

14.05 Suspension or Revocation of Permit

The VRWJPO may suspend or revoke a permit issued under these Rules in accordance with section 15.00 below: (1) if the permit was issued in error or on the basis of incorrect or inaccurate information supplied; (2) for violations of these Rules; or (3) if the preliminary and final subdivision approval received from the municipality or county is not consistent with the conditions of a permit. The VRWJPO may issue a summary suspension of a permit for violations of these Rules in accordance with section 14.02 above.

14.06 Stipulation Agreement

The VRWJPO and a person alleged to have violated provisions of these Rules may voluntarily enter into a stipulation agreement whereby the parties to the agreement: identify conditions on the property that require corrective action; agree on the corrective actions that must be performed by the person; and agree on the timeframes in which the corrective actions must be completed. If the person fails to fulfill the requirements of the agreement, the VRWJPO may seek compliance with the terms of the agreement through a court of competent jurisdiction or pursue other enforcement action allowed by these Rules.

14.07 Commencement of Civil Action

In the event of a violation or threat of violation of these Rules, the VRWJPO may institute appropriate civil actions or proceedings in any court of competent jurisdiction requesting injunctive relief to prevent, restrain, correct, or abate, such violations, or threatened violations. The VRWJPO may recover all costs, including reasonable attorney's fees, incurred for enforcement of these Rules.

SECTION 15.00 PERMIT SUSPENSION AND REVOCATION

15.01 Suspension

- A. Any permit required by these Rules may be suspended by the VRWJPO for violation of any provision of these Rules. Upon written notice to the permittee, said permit may be suspended by the VRWJPO for a period not longer than 60 days or until the violation is corrected, whichever is shorter.

- B. Such suspension shall not occur earlier than 10 VRWJPO working days after written notice of suspension has been served on the permittee, or if a hearing is requested, until written notice of the VRWJPB action has been served on the permittee. Notice to the permittee shall be made by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Such written notice of suspension shall contain the effective date of the suspension, the nature of the violation(s) constituting the basis for the suspension, the facts which support the conclusion that the violation(s) occurred, and a statement that if the permittee desires to appeal, the permittee must file a written request for an appeal hearing with the VRWJPB within 10 VRWJPO working days of the service of the suspension notice, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the VRWJPB by personal service or certified mail within 10 VRWJPO working days of service of the suspension notice, exclusive of the day of service. Following timely service of a request for hearing, the VRWJPB shall set a time and place for the hearing pursuant to section 15.00.
- C. If said suspension is upheld and the permittee has not demonstrated within the 60 day time period that the provisions of these Rules have been complied with, the VRWJPO may serve notice of continued suspension for up to an additional 60 days or initiate revocation procedures.

15.02 Summary Suspension

- A. If the VRWJPO finds that an imminent threat to the environment or to public health, safety or welfare requires emergency action and incorporates a finding to that effect in its order, summary suspension of a permit may be ordered by the VRWJPO upon notification to the VRWJPO attorney. Written notice of such summary suspension shall be made by personal service or by certified mail on the permittee at the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Alternatively, the VRWJPO may post copies of the notice of summary suspension of the permit on the property for which the permit was issued. Said posting shall constitute the notice required under this section.
- B. The written notice shall state the effective date of the summary suspension, the nature of the violation(s) requiring emergency action, the facts which support the conclusion that the violation(s) occurred and a statement that if the permittee desires to appeal, the permittee must file a request for an appeal hearing with the VRWJPB within 10 VRWJPO working days of service or posting of the suspension notice, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the VRWJPB by personal service or by certified mail within 10 VRWJPO working days of service or posting of the suspension notice, exclusive of the day of service. Following timely service of a request for a

hearing, the VRWJPB shall set a time and place for the hearing pursuant to section 15.00.

- C. The summary suspension shall not be stayed pending an appeal to the VRWJPB, but shall be subject to dismissal upon a favorable re-inspection by the VRWJPO or favorable appeal to the VRWJPB.

15.03 Suspension Re-inspections

Upon written notification from the permittee that all violations for which a suspension or summary suspension was invoked have been corrected, the VRWJPO shall re-inspect the site or activity within a reasonable length of time, but in no case more than three VRWJPO working days after receipt of the notice from the permittee. If the VRWJPO finds upon re-inspection that the violations constituting the grounds for the suspension have been corrected or removed, the VRWJPO shall immediately dismiss the suspension by written notice to the permittee, served personally or by certified mail on the permittee at the address designated in the permit application, with a copy to the VRWJPO attorney.

15.04 Revocation

- A. Any permit granted pursuant to these Rules may be revoked by the VRWJPO for violation of any provision of these Rules.
- B. Revocation shall not occur earlier than 10 VRWJPO working days from the time that written notice of revocation from the VRWJPO is served on the permittee, or if a hearing is requested, until written notice of the VRWJPB's action has been served on the permittee. The notice of revocation to the permittee shall be made by personal service or by certified mail to the address designated in the permit application. Service by certified mail shall be deemed complete upon mailing. Such written notice of revocation shall contain the effective date of the revocation, the nature of the violation(s) constituting the basis for the revocation, the facts which support the conclusion that the violation(s) occurred and a statement that if the permittee desires to appeal, the permittee must file a request for an appeal hearing with the VRWJPB within 10 VRWJPO working days of service of the revocation notice, exclusive of the day of service. The appeal hearing request shall be in writing stating the grounds for appeal and served on the VRWJPB by personal service or by certified mail within 10 VRWJPO working days of service of the revocation notice, exclusive of the day of service. Following timely service of a request for a hearing, the VRWJPB shall set a time and a place for the hearing to be held pursuant to section 15.00.

SECTION 16.00 HEARINGS

Hearings requested under these Rules shall be held before the VRWJPB, or a hearing examiner as provided below, and shall be open to the public.

- A. **Timeframe for Hearing.** Unless an extension of time is requested by the appellant directed to the chair of the VRWJPB and is granted, the hearing will be held no later than 45 calendar days after the date of service of request for a hearing, exclusive of the date of such service. In any event, such hearing shall be held no later than 90 calendar days after the date of service of request for a hearing, exclusive of the date of such service.
- B. **Notice of Hearing.** The VRWJPB shall mail notice of the hearing to the appellant at least 15 VRWJPO working days prior to the hearing. Such notice shall include:
 - 1. A statement of time, place, and nature of the hearing.
 - 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - 3. A reference to the particular section of the Rules involved.
- C. **Hearing Examiner.** By resolution, the VRWJPB may appoint an individual, to be known as the hearing examiner, to conduct the hearing and to make findings of fact, conclusions and recommendations to the VRWJPB. The hearing examiner shall submit the findings of fact, conclusions, and recommendations to the VRWJPB in a written report and the VRWJPO may adopt, modify, or reject the report.
- D. **Conduct of the Hearing.** The appellant and that VRWJPO may be represented by counsel. The VRWJPO, the appellant and additional parties, as determined by the VRWJPB or hearing examiner, in that order, shall present evidence. All testimony shall be sworn under oath. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses, and present argument. The VRWJPB or hearing examiner may also examine witnesses.
- E. **Burden of Proof.** The VRWJPO shall have the burden of proving its position by a preponderance of the evidence, unless a different burden is provided by substantive law, and all findings of fact, conclusions, and decisions by the VRWJPB shall be based on evidence presented and matters officially noticed.
- F. **Admission of Evidence.** All evidence that possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded. The hearing shall be confined to matters raised in the VRWJPO's written notice of

suspension, summary suspension, revocation, or denial of a permit, or in the written request for a hearing.

- G. Pre-Hearing Conference. At the written request of any party, or upon motion of the VRWJPB or hearing examiner, a pre-hearing conference shall be held. The pre-hearing conference shall be conducted by the hearing examiner, if the VRWJPB has chosen to use one, or by a designated representative of the VRWJPB. The pre-hearing conference shall be held no later than five VRWJPO working days before the hearing. The purpose of the pre-hearing conference is to:
1. Clarify the issues to be determined at the hearing.
 2. Provide an opportunity for discovery of all relevant documentary, photographic or other demonstrative evidence in the possession of each party. The hearing examiner or VRWJPB's representative may require each party to supply a reasonable number of copies of relevant evidence capable of reproduction.
 3. Provide an opportunity for discovery of the full name and address of all witnesses who will be called at the hearing and a brief description of the facts and opinions to which each is expected to testify. If the names and addresses are not known, the party shall describe them thoroughly by job duties and involvement with the facts at issue.
 4. If a pre-hearing conference is held, evidence not divulged as provided above shall be excluded at the hearing unless the party advancing the evidence took all reasonable steps to divulge it to the adverse party prior to the hearing and:
 - a. The evidence was not known to the party at the time of the pre-hearing conference; or
 - b. The evidence is in rebuttal to matters raised for the first time at or subsequent to the pre-hearing conference.
- H. Failure to Appear. If the appellant fails to appear at the hearing, appellant shall forfeit any right to a hearing before the VRWJPB or hearing examiner. Appellant's failure to appear shall also be deemed as a waiver of appellant's right to appeal the VRWJPO decision and the VRWJPO's decision shall stand.
- I. Appeal of VRWJPB Decision. Any appellant aggrieved by the decision of the VRWJPB may appeal that decision to any court with appropriate jurisdiction.

SECTION 17.00 FEES

17.01 Policy

The VRWJPO finds that it is in the public interest to require applicants to pay the cost of administering and reviewing project applications and inspecting approved activities to assure compliance with these Rules, rather than using the VRWJPO's annual administrative levy for such purpose. The VRWJPO will establish a schedule of fees that may be amended from time to time to reflect the cost of providing each service.

17.02 Application Fee

A person applying for a permit required by these Rules must pay an application fee as established by the VRWJPB.

17.03 Review, Inspection, and Monitoring Fees

The VRWJPO shall require the payment of a fee for its costs related to the following:

- A. The review and analysis of the proposed activity, including services of engineering, legal, and other consultants. The VRWJPO may require a deposit to cover the cost of review at the time the application is filed. In some cases the review fee may be payable before a permit may be issued.
- B. The field inspection and subsequent monitoring of the permitted activity, including services of engineering, legal, and other consultants. The VRWJPO may require a deposit to cover the cost to inspect and monitor a proposed activity at the time the application is filed. Additional field inspection fees may be payable after issuance of a statement if continued inspection and monitoring of the activity is required. A permit may be revoked, or a certificate of completion withheld, if the field inspection fee is not fully paid.

The VRWJPO will provide a statement of any applicable costs incurred for completion of the above activities at the time of permit closeout or, if necessary, at the time of a request for more escrow dollars.

17.04 Fee Exemption

The federal government, the state, and political subdivisions are exempt from paying the fees set forth in sections 16.02 and 16.03 above.

17.05 Failure to Obtain Permit

Any person performing any activity for which a permit is required under these Rules without having first obtained a permit from the VRWJPO shall pay, in addition to such fines, court costs or other amounts as may be payable by law as a result of such violation, a field inspection fee equal to the actual cost for field inspections, monitoring and investigation of such activity, including services of engineering, legal and other consultants. The inspection fee shall be payable following the issuance of a statement by the VRWJPO. No permit shall be issued for the activity if there are any unpaid field inspection fees or other outstanding violations of these Rules.

17.06 Recovery

The fees provided for in these Rules may be recovered by the VRWJPO in any legal proceeding authorized by law.

SECTION 18.00 SEVERABILITY

If any court of competent jurisdiction shall adjudge any provision of these Rules to be invalid, such judgment shall not affect any other provisions of these Rules not specifically included in said judgment.

SECTION 19.00 REMEDIES CUMULATIVE

No remedy set forth in these Rules is intended to be exclusive but each such remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay in the exercise of any remedy for violation of these Rules shall later impair or waive any such right or power of the VRWJPO.

SECTION 20.00 EFFECTIVE DATE

These Rules, and any amendments thereto, shall be in full force and effect from and after their passage and publication according to law.

HISTORY

Passed by the VRWJPB on March 22, 2007.

Amended by the VRWJPB on October 28, 2010.

Amended by the VRWJPB on October 26, 2017.

Drafted for amendment by the VRWJPB on November 27, 2019.