



## Minnesota Pollution Control Agency

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# Regional Wastewater Treatment: Sanitary Districts and Cooperative Agreements

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*Please Note: This document is intended to be only an informal aid. Individuals should not rely solely on this document and should instead make themselves fully aware of all the requirements of each of the following ways to establish a sanitary district or sewer system by consulting Minnesota Statutes and Rules.*

**E**nsuring that wastewater is properly treated prior to discharge has important environmental and public health benefits. In the state of Minnesota, there are several methods to address a regional water pollution problem. These approaches range from organizing a sanitary district to forming cooperative agreements between governing bodies. The following is a brief overview of each of these methods.

### Sanitary districts (Minn. Stat. §§ 115.18 to 115.37)

In order to address a regional water pollution problem, the Minnesota Pollution Control Agency (MPCA) may be petitioned for the formation of a sanitary district. These districts are created “for the purpose of promoting the public health and welfare by providing an adequate and efficient system and means of collecting, conveying, pumping, treating and disposing of domestic sewage, garbage and industrial wastes within the district”. (Minn. Stat. § 115.19)

The petition to the MPCA must be signed by an officer of the governing body of the city, town or county in which all or a part of the proposed district is to be located. In lieu of the petition being signed by an officer of the county, the petition may also be signed by 20 percent of voters residing and owning land within the proposed district.

The governing body of the territory in

which the district is to be located must adopt a resolution. The petition shall be signed 40 days after the publication of the resolution in a qualified newspaper. In addition, a public meeting must be held to inform landowners in the proposed district of the intent to create the district.

If the MPCA determines that there is sufficient documentation of the need to create a district and the petitioners have met all statutory requirements, the MPCA will publish a notice of intent to approve the formation of the district in the *State Register*. After this notice is printed, there is a 30 day comment period during which landowners opposed to the proposal may request a hearing on the matter.

Finally, the MPCA will publish the Findings of Fact, Conclusions and Order (Order) in the *State Register*. The MPCA will either order the district to be created or deny the creation of the proposed district. If it is ordered that the district will be created, there will be a 30 day appeal period that will allow landowners to appeal the decision to the Court of Appeals. Upon expiration of the appeal period and if no appeals have been filed, the MPCA will file the Order with the Secretary of State, at which time the district will be deemed complete. In order to annex or detach an area adjacent to the district, the petitioners must proceed in a similar manner as prescribed for the creation of a district under Minn. Stat. § 115.20.

A board of managers of the district will be chosen as the governing body, which will have control of the funds, property and affairs of the district. The sanitary district will have the authority to construct, install, improve, maintain and operate a system for the prevention of water pollution.

### **Authority of cities and counties (Minn. Stat. § 444.075)**

Under Minn. Stat. § 444.075, cities (except cities with populations greater than 100,000) are given the authority to “build, construct, reconstruct, repair, enlarge, improve” or obtain waterworks systems, sewer systems and storm sewer systems. Counties, except those in the seven county metropolitan area, are also given this authority. In order to finance one of these systems, the governing body of a city or county may assess taxes and impose charges for connections to the water or sewer system. The governing body may also acquire the land necessary for construction of the system.

### **Initiating a district or system by county board or district court (Minn. Stat. ch. 116A)**

A county has the authority to put in a water and/or sewer system without forming a district. County boards and district courts (courts) have the authority to make arrangements in order to construct and maintain public water or sewer systems. A petition for the establishment of a water and/or sewer system and a governing board must be signed by at least 50 percent of the landowners in the area and must be submitted to the county auditor if the proposed system is within a county or the clerk of the district court if the system crosses two or more counties. Each landowner who signs the petition grants an easement to use the owner’s land for construction or maintenance of the system. A bond of not less than \$2,000 dollars is required to ensure that the expenses incurred by the county or the court will be paid if the establishment of the system is dismissed.

Within 30 days of the time the petition and bond are filed, the board or court will appoint an engineer who will survey the affected territory to determine whether the proposed project is necessary and feasible. A preliminary hearing will be scheduled after receipt of the engineer’s report. At the hearing, the board or court will determine whether the establishment of the system is necessary, feasible, will be of public benefit, and will promote public health. The board or court will then file the findings and order. The engineer will be ordered to make a detailed survey of the area, to furnish plans and specifications, and to estimate the cost of the project. It

will also be ordered that three disinterested residents of the area affected should be appointed as “viewers,” who will report on the estimated damages to land and properties that will result from the project.

A second hearing will be scheduled to discuss the reports of the engineer and the viewers. All oral and written testimony, the petition and the reports will be considered. The board or court will by order establish the water or sewer improvement if it is found that all proceedings have been in accordance with law, the benefits of the proposed system are greater than the costs, the system will be of public utility and benefit, public health will be promoted, and the system is practicable.

After the system has been ordered to be formed, the auditor(s) will proceed to let the job of constructing the system. The assessments will be determined by the procedures outlined in Minn. Stat. §§ 116A.17 – .18.

The county board is allowed to issue bonds to defray the cost of establishing and constructing a system and may issue certificates of indebtedness. A commission will be appointed with a number of representatives proportionate to the population of each area of the system. Any property occupied by a water and/or sewer commission is exempt from taxation by the state or any political subdivision of the state.

A county board may also initiate the establishment of a water or sewer system by adopting a resolution. After passing the resolution, the proceedings for establishment of the system under Minn. Stat. ch. 116A are identical to those for the formation of a district by petition, except that a bond is not required. Furthermore, a county board may, without filing a petition, form a water and/or sewer district within the county without the board or court first ordering the establishment of a system.

### **Special legislation**

A sanitary district may be created by the legislature through enactment of a special law providing for such district and its governing board.

### **Cooperative agreements between governing bodies (Minn. Stat. § 471.59)**

Two or more governing bodies may enter into a joint or cooperative agreement to exercise any power common to the parties. The agreement between the two contracting parties must state the purpose of the cooperation and provide the manner in which the power

will be exercised. If the agreement calls for the formation of a joint board, all of the parties must be

fairly represented. Public funds may be used to carry out the purposes of the agreement. The cooperation between the contracting parties may continue until terminated according to the terms of the agreement

### **Subordinate service districts (Minn. Stat. ch. 365A)**

A subordinate service district is a defined area within a town, but not embracing an entire town, that will receive a government service to be financed from revenues from the area to receive the service. A petition may be submitted to a town board to request formation of a subordinate service district. The petition must be signed by at least 50 percent of the property owners in the proposed district, should include the territorial boundaries of the district, and indicate the services to be provided. A public hearing will then be held to determine whether the district should be established. The town board will pass a resolution to approve or disapprove the establishment of the district, which will be published in a qualified newspaper and sent to each affected property owner. This district will begin 60 days after publication of the resolution or at a later date specified in the resolution. The town board will adopt a budget for operation of the district, which will include a property tax and/or a service charge.

If a petition for referendum is signed by at least 25 percent of landowners and received before the district is established, there will be a reverse referendum to vote on whether the district shall be formed. If a majority of property owners support the creation of the district, the district will be formed at the time the town clerk certifies the vote.

A district may also be expanded through the procedure outlined above for formation of a district. Only those individuals residing within the territory to be added to the district will be able to vote in the election for expansion, unless at least 25 percent of property owners in the district petition to be included in the election.

A subordinate service district can also be terminated. If a petition for removal of the district is signed by at least 75 percent of the property owners and presented to the town board, a public hearing will be held. The town board will then decide to discontinue or continue the district or take some other action.

### **Authority of towns (Minn. Stat. § 115.50)**

All towns in Minnesota have the authority to “construct, install, acquire, maintain and operate disposal systems....” The towns may levy taxes and make other assessments to fulfill the purposes outlined in Minn. Stat. § 115.50.

### **Contractual agreements for wastewater treatment (Minn. Stat. § 115.49)**

If the MPCA determines after a hearing on the subject matter that cooperation between two or more municipalities is necessary to provide for areawide wastewater management and treatment, the agency may issue an order for a contract between the municipalities. The MPCA may specify the general purposes and terms of the proposed contract and may direct the municipalities involved to formulate and execute the contract.

A contract between two or more municipalities may be renegotiated and modified if all parties are in agreement. A municipality which is party to the contract and which operates a plant for disposal of sewage, industrial wastes or other wastes may put forward new rates and charges for the service performed under the contract. The entity requesting the change must hold a hearing to determine the proper rates and charges. If any party to the contract is dissatisfied with the new rates and charges, it may submit written notice to the other parties. The dispute will be brought forward to a board of arbitration, which will make a decision on the proper rates and charges. The rates and charges for the operation and maintenance of the sewage and waste disposal plant must be reasonable and may not result in a profit.

A contract may be reformed or terminated if there is agreement among all municipalities in the contract and an application is submitted to and approved by the MPCA. If an application is submitted to the MPCA by only one party to the contract, the MPCA may order reformation or termination of the contract or may hold a public hearing to hear evidence on the matter.

### **Lake improvement districts (Minn. Stat §§ 103B.501 to 103B.581)**

A lake improvement district (district) may be formed in order to “preserve and protect the lakes of the state and to increase and enhance the use and enjoyment of the lakes”. (Minn. Stat. § 103B.511) The program will be administered by the commissioner of the Department of

Natural Resources (DNR), who shall adopt rules to provide guidelines, criteria, and standards for the establishment of lake improvement districts. The borders of the district are encouraged to be consistent with natural hydrologic boundaries, and may extend into more than one county if a cooperative agreement between the counties is formed.

There are several ways to form lake improvement districts: (1) a resolution by the county board, (2) petition to the county board and (3) petition to the DNR. If the hydrologic boundaries of a proposed district extend into more than one county, several county boards may cooperatively form a district.

The first method for forming a lake improvement district is by a county board adopting a resolution declaring its intent to form one. The resolution must provide information on the boundaries of the district, management programs, finances and supervising, and must set a date for a hearing on the resolution. A copy of the resolution shall be sent to the town board(s) in the area of the district, who shall be encouraged to provide input on the proposed creation of the district. A public hearing must be held for the purpose of determining whether the district should be formed. Interested parties may share their opinions on the necessity of the proposed district and possible effects of its formation. Objections may be filed with the county auditor before the date of the hearing.

The county board may order the establishment of the lake improvement district if the board determines that (a) the proposed district is necessary or will further the public welfare, (b) property in the district will be benefited or (c) formation of the district will not cause long-range environmental pollution. The order must contain the above-mentioned information. An order establishing a district must also state the name of the district, boundaries, management programs to be undertaken, financing, and details on the board of directors. The order shall be published once in the official newspapers of counties where the district is located and shall be filed with the Secretary of State, the MPCA and the DNR. Unless otherwise specified, the establishment of the district is effective 30 days after publication of the order.

If a lake improvement district is established by order of a county board, 26 percent of landowners may petition for a referendum on the establishment of the district at any time before the effective date of the order. The county board must issue an order staying the establishment until a referendum vote is taken. The election shall take place in July or August and the county auditor must certify the vote. The results of the

election will determine whether the district is established.

There is a second way of forming a district through a petition. A petition for formation of a lake improvement district must be signed by 26 percent of the property owners in the territory of the proposed district and filed with the county auditor. The petition must be addressed to the county board and must include the name of the proposed district, the necessity to promote public health or welfare, the benefits to property, the boundaries, a map, the number of proposed directors and a request for establishment of the district.

Within 30 days of being notified by the county auditor that the signatures are verified, the board must hold a public hearing. Within 30 days of the holding of the hearing, the board must issue an order establishing or denying the establishment of the lake improvement district.

A third way of forming a district is possible if the county board has disapproved the establishment of a district. A petition for creation of the district may be submitted to the commissioner of the DNR. The petition should include the same information as called for in a petition to the county board.

After the county verifies the signatures on the petition, the DNR may hold a hearing within 30 days at the expense of the county board. The DNR shall consider the reasons why the petition was disapproved by the county board in making its decision to have a public hearing.

If a hearing is held within 30 days of the verification of signatures or after a hearing is held, the DNR shall approve or disapprove the establishment of the district by order. The order may contain modifications of the boundaries, functions, financing or organization than what were proposed in the petition.

The county board shall appoint persons to serve on the board of directors for the district and residents of the district must make up a majority of the directors. The district shall have an annual meeting, at which elections, approval of the budget, approval of projects that cost more than \$5,000 and consideration of other issues shall occur. Each year an annual report must be prepared which shall be submitted to the county board, town boards and cities within the area of the district, the DNR and the MPCA within four months of the annual meeting. The county board has the authority to assess the costs of projects, impose service charges and levy taxes.

The boundaries of a district may be enlarged in a similar manner as provided for the creation of a district. The



termination of a lake improvement district may be initiated by a petition signed by 26 percent of property owners.

### **Watershed districts (Minn. Stat. Ch. 103D)**

A watershed district may be formed in order to “conserve the natural resources of the state by land use planning, flood control, and other conservation projects by using sound scientific principles for the protection of the public health and welfare and the provident use of the natural resources.” (Minn. Stat. §§ 103D.210)

A petition for the establishment of a watershed district may be filed with the Board of Water and Soil Resources (Board) and should include the name, the territory, the reasons for formation, why the district would be conducive to public health and welfare, a map of the district, the number of proposed managers and nominees for the manager positions. The petition must be signed by (1) one-half or more of the counties in the district, (2) counties having 50 percent or more of the area within the district, (3) a majority of the cities within the district or (4) fifty or more residents within the proposed district. The petition must be filed with the county auditors of the affected counties.

After the Board receives the petition, the director must prepare a preliminary map and report about the watershed district that shall recommend whether the district should be established. A rulemaking hearing must be conducted to determine whether the watershed district shall be formed. The hearing will allow all interested parties to give testimony. The Board shall determine whether the district should be formed and will issue an order establishing or dismissing the establishment of the district. In the case of noncontroversial plans to form a watershed district, the Board may give notice of the petition and conduct a hearing only if a request for a hearing is received within 30 days of the notification. If rulemaking proceedings are not conducted, a local unit of government or 25 or more residents may demand a contested case hearing, which would be presided over by an administrative law judge. A party may appeal the final decision of the Board to the Court of Appeals. Territory of a district may be withdrawn, enlarged or consolidated by petition to the Board. A watershed district may be terminated by petition to the Board as well.

A board of managers of the watershed district will be appointed by the counties that shall only include voting residents and individuals who are not public officers of the county, state or federal government (except a soil and water conservation supervisor). The managers must elect officers of the board, adopt a seal, keep a record of

all proceedings, meet at least annually to conduct business, and adopt bylaws. The managers may employ a chief engineer, professional assistants and other employees and shall provide for their compensation. The managers shall appoint an advisory committee consisting of at least five members to make recommendations to the managers on watershed district issues.

The board of managers has a number of authorities, including the ability to incur debts, sue, exercise eminent domain, levy taxes and initiate projects to achieve the purposes of the district. The managers may operate water supply systems, control the use of water, take over drainage systems, provide for sanitation and public health, and implement water-resource-management programs. The board of managers must maintain projects that are implemented.

The managers must adopt rules to accomplish the purposes of the watershed district, prepare an annual report, have an annual audit, and adopt a watershed-management plan. A violation of a rule or order of the managers is an enforceable action that could result in a criminal prosecution. An order made by the board can be appealed by any party to the board or the district court

### **For more information**

The MPCA has staff available to answer your questions about sanitary districts. Please contact us at 218-302-6652, toll-free at 800-657-3864; or TTY at 651-282-5332.

Additional information can also be found at the MPCA website: <http://www.pca.state.mn.us/enzqb31>.