

# Environmental Services

## County Board Agenda Staff Report for T 12/19/2017

### Old Business:

### New Business:

- **AIS Advisory Team rapid response funding distribution protocol recommendation**

#### **Enclosed Document(s)**

- AIS Advisory Team rapid response funding draft distribution protocol

The AIS Advisory Team (AT) met on Tuesday, November 21 and discussed/developed the attached draft rapid response funding distribution protocol. The protocol will be used as a guide to help us determine how and where to spend the rapid response funds in the AIS budget (\$30k set aside in 2017 & \$3250 spent, \$20K in 2018) if/when we receive funding requests from lake associations or we voluntarily undertake a response effort. If the AT recommended draft is acceptable for implementation, it is up to the Board on what level of acceptance of the protocol is needed – i.e. a motion, consensus support, etc.

- **2018 retainer for legal services**

#### **Enclosed Document(s)**

- 2018 retainer agreement

I request approval to renew our retainer with Scott Anderson and his firm for zoning-related legal counsel in 2018. Scott has been on retainer with us since 2005 and provides an invaluable service. His familiarity with our ordinances via this retainer has allowed us to receive his assistance through MCIT on a number of successful litigation defenses. The retainer is a part of the 2018 budget as has been the historic budgetary practice. The retainer amount (\$6800) is unchanged from 2017's rate. County Attorney Frieden is supportive of Scott's retainer being renewed. A copy of the proposed 2018 retainer agreement is attached. The language is the same as that in the current 2017 retainer agreement.

- **SWCD – Wetland Conservation Act in-kind matching funds request**

#### **Enclosed Document(s)**

- December 12, 2017 letter from Julie Kingsley, SWCD Manager
- 2016 WCA joint powers agreement (JPA) between Hubbard Co. and Hubbard SWCD

The Natural Resources Block Grant (NRBG) money we receive for the Wetland Conservation Act (WCA) Program administration (\$25,103/yr for 2014-18) requires a 1:1 in-kind match. The enclosed 2016 WCA JPA with the Soil and Water Conservation District (SWCD) does not speak to this match. The SWCD historically has provided the match since it has administered the WCA Program. The Board of Water and Soil Resources (BWSR) oversees the NRBG. My BWSR contact informed me this August that BWSR's Flex Spending Policy allows the County's excess match for our Shoreland Ordinance Program (we provide well more in levy dollars than the \$8605 NRBG shoreland funds we receive to administer the Program) to be used as the WCA Program match. No physical transfer of money from the County to the SWCD is required. The dollars we provide through the levy for Shoreland Program administration may simply serve as the required match amount. My BWSR contact also said that BWSR would not require any documentation in order for the excess Shoreland Program money the County provides to be used to provide the required WCA match. For this reason, the department does not object to shoreland funds being used in this way. The SWCD is asking via the enclosed letter if you would be willing to provide a \$17,800 match for the 2016 WCA grant, a \$25,103 match for the 2017 WCA grant, and continue

providing the WCA match from the Shoreland Program funds going forward. The department does not object to the request as long as the current conditions of BWSR's above-outlined position and our shoreland levy dollars exceeding the required NRBG shoreland grant amount continue. If either of these two items would change such that this potential arrangement would be negatively affected, then the department would recommend discontinuance of the arrangement at that time.

**Other:**

- **MPCA proposed SSTS Rule amendment**

**Enclosed Document(s)**

- Draft proposed amendment to MR 7082.0700 Subp. 4 Compliance inspection; existing systems.

The Minnesota Pollution Control Agency (MPCA) is proposing an amendment to the State septic system rules that would add a requirement that septic tanks must be pumped out in order to perform a compliance inspection. See attached draft. The Department and many local contractors are opposed to this proposal because it will increase the cost of a compliance inspection and thus serve as an incentive for people to do the wrong rather than right thing. A common price to pump a tank is around \$200. Compliance inspections on existing systems are valid for three years. It ought to remain up to a licensed inspector to determine if s/he wants a tank pumped in order to conduct a compliance inspection. The proposal seems to be an indirect way for the MPCA to realize its goal of requiring septic tanks statewide to be pumped every three years. The MPCA is soliciting comments on the proposed rulemaking. Thus, I wanted to bring the matter to your attention in order to obtain your feedback that I can then share with the MPCA in written comment form as well as orally at upcoming meetings with MPCA staff and local legislators.

# Rapid Response Funding Distribution Protocol

With increasing occurrences of infestations in Hubbard County, it is necessary to develop some sort of protocol for distributing funds from the Rapid Response Fund (RRP fund) that Hubbard County has created. There needs to be consistent criteria used to determine if a project is eligible to receive RRP funds from the County. In response to this need, the AIS Advisory Team met on November 21, 2017 to discuss funding protocols to be used moving forward and the following protocol was developed.

## Factors Considered:

- Many infestations need a timely response. Decisions will need to be made on short notice.
- In order to be eligible to receive funding, the infestation must be reasonably contained - meaning not found lake-wide, but rather in a concentrated area. Lake-wide infestations are much more difficult to manage and have a significantly lower containment success rate. They also tend to be much more expensive.
- The infestation must pose a significant risk to the ecosystem of that waterbody. There must be a classification system for different species ranking them in order of highest rate of invasiveness (the degree to which they affect or change an ecosystem).
- The likelihood of spreading to other nearby lakes must also be taken into consideration.
- **The annual dollar amount to be used for RRP's will be capped at \$20,000.**

## Proposed Protocol:

**RRP dollars will only be used to treat new infestations where fast action is required. Annual recurring treatments will not be funded with RRP dollars.**

**Projects will be funded on the basis that:**

- The infestation under question is treatable.
- The infestation is concentrated to one specific area and is not lake-wide.
- The DNR has determined that treatment is a viable option.
- Successful containment is likely.
- AIS Advisory Team supports funding request.
- County Board approves funding request.
- The Environmental Services Department will use best judgement when determining if RRP fund requests are valid and should be accommodated.
- The dollar amount will be taken into consideration as well, knowing that the annual cap is \$20,000.

## **RETAINER AGREEMENT FOR LEGAL SERVICES**

This Agreement is entered between Hubbard County (“County”), and Rupp, Anderson, Squires & Waldspurger, P.A., attorneys at law (“Attorneys”).

**WHEREAS**, the County desires professional legal services relating to land use and zoning issues; and

**WHEREAS**, the Attorneys provide services relating to land use to Counties, and have the skill and expertise necessary to perform the duties as set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Scope of Services: The Attorneys shall provide advice and consultation upon issues relating to zoning matters pursuant to an annual Retainer Agreement for the sum of \$6,800.00. The primary attorney to render all such advice will be Scott T. Anderson. If Scott T. Anderson is not available, then Jay T. Squires, or their delegates, shall render such advice.

For purposes of this Retainer Agreement, advice and consultation shall consist of telephone conversations, e-mail communications, and/or short letters on non-recurrent matters, but shall not include any research and/or drafting beyond the above that may be requested by the County, except as may be otherwise set forth in this Agreement. Any requested research and/or drafting will be billed at hourly rates set forth herein. The County and the Attorneys may conclude that a particular matter or issue will not be resolved through one or several telephone calls. If so, then upon agreement of the County and the Attorneys, the Attorneys will open a separate file for the matter and perform the work on hourly basis, to be billed at the hourly rates set forth herein.

The advice and consultation covered under this Agreement shall include the follow areas:

- A. Questions relating to the permitting process for all permits called for under the County’s land use ordinances, as well as questions relating to rezoning;
- B. Questions pertaining to conducting hearing processes on land use requests including, but not limited to, any questions pertaining to the Open Meeting Law or Minnesota Government Data Practices Act, as they may pertain to such hearings;
- C. Questions pertaining to EAW’s, EIS’s, or any other environmental review;

D. Questions pertaining to enforcement of land use ordinances; and

E. Questions relating to ordinance and statutory interpretation.

It is the intent of the parties to this Agreement that the scope of this Retainer Agreement shall include short written letters confirming telephone advice and consultation, as deemed necessary by the County and/or the Attorneys, to the extent that such letters do not involve any additional research or other drafting.

2. Authorized Contact Persons: Those County personnel who will be authorized to contact the Attorneys for services included within this Agreement are the Environmental Services Officer, the County Coordinator, the County Attorney, the County Board Chair, and/or their delegates.
3. Term: From January 1, 2018 through December 31, 2018.
4. Payment for Services: The Attorneys shall bill the County quarterly in equal installments for the amount due under the retainer. Payment is due thirty (30) days after the receipt of the bill. Each quarterly bill for retainer services will include within it a statement of costs and disbursements incurred during that quarterly period that are to be paid by the County under this Agreement.
5. Costs: In addition to the annual retainer amount, the County agrees to pay actual, necessary and reasonable costs and expenses incurred by the Attorneys in the performance of the services under this Agreement. Those costs include mileage at the I.R.S. rates; photocopying at 20 cents per page; facsimile at \$1.00 per page/\$5.00 maximum per transmission; and the actual costs of long distance phone calls and postage. If additional services are rendered under Paragraph 7 herein, the County also recognizes that it would be responsible for costs and disbursements incurred by the Attorneys, including, but not limited to, costs for messengers, court costs, arbitration, or mediation expenses, deposition expenses, and/or other trial or administrative hearing related expenses.
6. In-Service Training: The Attorneys will provide up to three hours of on-site in-service training to County officials, officers, and/or staff. This in-service training will occur in one three-hour session, upon any subject relating to the area of land use or, at the choice of the County, upon any other topic(s)

mutually agreed to by the County and the Attorneys that are within the normal working areas of Rupp, Anderson, Squires & Waldspurger.

7. Services at Hourly Rates: Any special projects or services provided by the Attorneys that are outside the scope of services covered by the retainer will be provided at the hourly rates set forth below. Any services contracted at hourly rates will be billed on a monthly basis. Payment is due 30 days after the receipt of the bill. Invoices will be in the standard format of Rupp, Anderson, Squires & Waldspurger, and will indicate the amount of time spent on each legal issue, the attorney providing the service, the nature of the work done, and the exact amount of time spent.

**Hourly Rates:**

Scott T. Anderson	\$185.00/hour
Jay T. Squires	\$185.00/hour
Amy E. Mace	\$185.00/hour
Trevor S. Helmers	\$185.00/hour
Tessa S. Wagner	\$175.00/hour
John P. Edison	\$175.00/hour
Liz J. Vieira	\$175.00/hour
Kristin C. Nierengarten	\$175.00/hour
Zachary J. Cronen	\$175.00/hour
Michael J. Ervin	\$175.00/hour
Jake Kimmes	\$175.00/hour
Abbi R. Kelzer	\$175.00/hour
Steve R. Gershone	\$175.00/hour

**COUNTY OF HUBBARD**

**RUPP, ANDERSON, SQUIRES &  
WALDSPURGER, P.A.**

By: \_\_\_\_\_

By: Scott T. Anderson

Its: \_\_\_\_\_

Scott T. Anderson  
333 South Seventh Street, Suite 2800  
Minneapolis, MN 55402  
(612) 436-4300

Date: \_\_\_\_\_

Date: December 12, 2017

RASW: 74107



603 Central Ave. N., Suite 100 Park Rapids, MN 56470  
218-732-0121

December 13, 2017

Eric Buitenwerf  
Hubbard County ESO  
301 Court Ave.  
Park Rapids, MN 56470

Eric Buitenwerf and Hubbard County Commissioners,

The Hubbard County Soil and Water Conservation District (SWCD) is formally requesting the use of Hubbard County's 2016 and 2017 expended Shoreland dollars to use as a match for the Wetland Conservation Act (WCA) for 2016 in the amount of \$17,800.00 and for the 2017 WCA match of \$25,103.00. We will need written approval to use your expended County Shoreland 2016 and 2017 funds to include with our final e-link reports to BWSR.

Authority was given to the Hubbard SWCD by County Resolution to implement Hubbard County's WCA by signed agreement of the County Board and the SWCD. Going forward from this day the Hubbard SWCD would also like to continue using expended Hubbard County Shoreland dollars to match the full required annual WCA funds.

Sincerely,

A handwritten signature in blue ink that reads "Julie Kingsley".

Julie Kingsley  
District Manager

## JOINT POWERS AGREEMENT

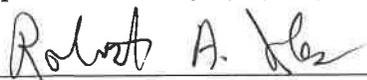
### BETWEEN HUBBARD COUNTY SOIL AND WATER CONSERVATION DISTRICT AND HUBBARD COUNTY FOR ADMINISTRATION OF THE WETLAND CONSERVATION ACT (1991)

This agreement is made between Hubbard County Soil and Water Conservation District and Hubbard County for administration of the Wetland Conservation Act of 1991 (WCA), pursuant to authorizing resolutions of the boards of Hubbard County Soil and Water Conservation District and Hubbard County.

This agreement is authorized by Minnesota Statutes §103C.331 subdivision 19 (for SWCDs), and §471.59 (for counties and municipalities).

1. Hubbard County Soil and Water Conservation District (SWCD) will act as Local Governmental Unit (LGU) for Hubbard County, to administer, to the extent of this agreement, those soil and water conservation related official controls of Hubbard County under the WCA and the rules of the Board of Water and Soil Resources adopted under the act.
2. A joint powers board consisting of two supervisors appointed by the SWCD and two commissioners appointed by the Hubbard County Board of Commissioners, will be made aware of occurrences and events by the appointed LGU administrator from the SWCD, of the WCA on a quarterly meeting basis or as necessary.
3. Decision making authority for WCA (exemption, no-loss, wetland boundary and type, sequencing, replacement plan, and wetland banking) applications is placed with the SWCD.
4. The SWCD and the joint powers board will follow Hubbard County procedures regarding notices and hearings and will collect for its account fees as agreed to by the SWCD and Hubbard County Commissioners.
5. Hubbard County will pay to the SWCD, upon receipt from the State of Minnesota, the full amount provided the County through the Natural Resources Block Grant for WCA. Should the State fail to provide the Block Grant funds, the County shall not be required to make up the shortfall.
6. Hubbard County will provide legal advice and non-financial support to the SWCD administration and enforcement.
7. The joint powers board will meet quarterly or as necessary to discuss WCA events and any related issues pertaining to the WCA.

This agreement may be amended by mutual agreement of the Hubbard County Soil and Water Conservation District and Hubbard County by resolutions of their respective boards. This agreement shall become effective upon execution by all duly authorized signatures and shall remain in effect until terminated by agreement of the parties or thirty (30) days after written notice of termination by either party to the other.



Board Chairman, Hubbard County SWCD

2-09-16

Date



Board Chairman, Hubbard County Board of Commissioners

09 FEB 2016

Date

**MN Rule 7082.0700**

Subp. 4. Compliance inspection; existing systems.

A. A compliance inspection of an existing system must first determine whether the soil dispersal system, sewage tanks, or other conditions pose an imminent threat to public health and safety as defined in part 7080.1500, subpart 4, item A. A determination must then be made as to whether the sewage tanks and soil dispersal area are failing to protect ground water as defined in part 7080.1500, subpart 4, item B. The inspection must also verify compliance with part 7080.1500, subpart 4, item C.

§ B. The agency's inspection report form for existing SSTS, supplemented with any necessary or locally required supporting documentation, must be used for the existing system compliance inspections in subitems (1) to (4). Allowable supporting documentation includes tank integrity assessments made within the past three years and prior soil separation assessments.

(1) A-Tank integrity and safety compliance assessments must be completed by a licensed SSTS inspection, maintenance, installation, or service provider business or a qualified employee inspector with jurisdiction. An existing compliant tank integrity and safety compliance assessment must be completed on an empty tank, through a maintenance hole when available, and is valid for three years unless a new evaluation is requested by the owner or owner's agent or is required according to local regulations.

Comment [BM1]: This is a reference to the inspection form. The actual safety compliance criteria is located in 7080.1500 Subp . 4 A. Electrical and tank covers.  
If people want we could make this another item here that refers solely to safety compliance assessments, but it needs to be separate from tank integrity. Also right now it is a section called other compliance criteria.

Comment [MB(2): This was requested to be added at Talking tours, AC, MOWA, and SIETF

Comment [BM3]: This is where we are requiring it to be pumped

Comment [BM4]: This is the part that allows a previously completed tank integrity to be used. The inspection form will indicate that the inspector using that information is accepting responsibility for the accuracy of the form they are using.

§ (2) A soil separation compliance assessment must be completed by a licensed inspection business or a qualified employee inspector with jurisdiction. Compliance must be determined either by conducting new soil borings or by prior soil separation documentation made by two independent parties. The soil borings used for system design or previous inspections are allowed to be used. If the soil separation has been determined by two independent parties, a subsequent determination is not required unless requested by the owner or owner's agent or required according to local regulations.

(3) Determination of hydraulic performance and other compliance in part 7080.1500, subpart 4, item A, must be completed by either a licensed inspection business or a qualified employee inspector with jurisdiction.

Comment [BM5]: We will be modifying the form as well as a part of this

(4) A determination of operational performance and other compliance in part 7080.1500, subparts 4, item C, and 5, must be completed by a licensed advanced inspection business, a qualified employee with an advanced inspector certification with jurisdiction, or a service provider. A passing report is valid until a new inspection is requested.

6-20-2017

C. A certificate of compliance or notice of noncompliance for an existing system must be based on the results of the verifications in item B. The certificate of compliance or notice of noncompliance for an existing system must be signed by a licensed inspection business or a qualified employee inspector with jurisdiction. The certificate or notice for an existing system must be submitted to the local unit of government with jurisdiction and the property owner or owner's agent no later than 15 days after a compliance inspection. The completed form must also be submitted to the owner or owner's agent. The certificate of compliance for an existing system is valid for three years from the date of issuance, unless a new inspection is requested by the owner or owner's agent or is required according to local regulations.

D. If a compliance inspection for an existing system indicates that the system is noncompliant, the notice must be signed by a licensed inspection business or qualified employee inspector with jurisdiction, contain a statement of noncompliance, and specify the reasons for noncompliance of each component specified in item B.

DRAFT