HAMMERING WITH A CARROT

USING THE RIGHT ENFORCEMENT TOOL

Maggie Karschnia, Prior Lake-Spring Lake WD
Forrest Kelley, Capitol Region WD
Michael Welch, Smith Partners PLLP
1) Review – Where We Left Off
2) Watershed (Super) Powers
3) Where to Start (Using Carrots)
4) Dropping the Hammer
5) Examples and Discussion
1) Review – Travel Back to 2017

- **State-Wide WD Survey**
- **Brief Overview of Statutory Authority**
STATE-WIDE PERMIT SUMMARY

PERMIT ENFORCEMENT

TECHNIQUES & TROUBLESHOOTING

STATE-WIDE PERMIT PROGRAM SURVEY

A state-wide survey was conducted to gather general information on watershed district permit programs in Minnesota. No two watershed districts (WDs) are alike, but many share similar regulations or use similar enforcement techniques. Of the 45 watershed districts in the state, only 38 have a permitting program. Quick facts on those 38:

- The average watershed district has 4 employees and issues 67 permits per year.
- The average range of permits issued each year by individual WDs is from 1 - 178.
- 74% of watershed districts require permit fees with the application.
- Permit fees range from $50—$5,000.
- Some WDs only invoice permittees as costs are incurred, while others charge a flat fee.
- About 75% of permittees exercise the right to request permit variances.
- 34% of watershed districts assess a fee for permits requested after the fact. The fee amount ranges from $250 to $3,000 + expenses.

What are watershed district’s permitting?

MAWD 2017 Annual Meeting Session

Advice from WDs across the state:

Clear communication with a person in violation is paramount.  
- Torin McCormack, RRWD

Education and outreach on the permitting process will help avoid problems.  
- Steve Lawler, TCWD

Meeting on site for a pre-constructing scoping is important and effective.  
- Dylan Erickson, MFCRWD

Working with the local municipalities can be a huge help.  
- Emily Heinz, CLFLWD

Be as consistent as possible and have good tracking processes.  
- Kevin Rudd, WRWD

Work through the Cities’ permitting processes as much as possible.  
- Kevin Rudd, WRWD
BRIEF OVERVIEW OF STATUTORY AUTHORITY

• MN Statutes sections 103B.201, 103D.201
  Watershed District Purposes

• 103D.341 Rules; 103D.345 Permits
  The managers must adopt rules to accomplish the purposes of this chapter and to implement the powers of the managers.

• 103D.545, .551 ENFORCEMENT
Subdivision 1. A violation of a provision of this chapter, a rule, order, or stipulation agreement made or a permit issued by the managers under this chapter is a *misdemeanor*.

Subdivision 2. A provision of this chapter, a rule, order, or stipulation agreement made or a permit issued by the managers under this chapter may be enforced by *criminal prosecution, injunction, action to compel performance, restoration, abatement*, and other appropriate action.
2) Watershed (Super) Powers

Watershed law allows WDs to:

- Require permits
- Inspect properties/work
- Issue notices
- Issue compliance orders
- Fix and charge
ENFORCEMENT TOOLS IN THE TOOLBOX

- Written Warnings (NOPV)
- Verbal Warnings
- Coordinate Enforcement with LGUs
- Signed Letter by Board or Attorney
- Compliance Order
- Inspection Fees for Actual Costs Incurred
- Contact the MPCA
- Criminal Misdemeanor
- Implement Corrective Actions Using Permit Security $
2) Watershed Cryptonite

**Watersheds Can’t:**

- Issue citations (tickets)
- Impose penalties
- Arrest people
- Punch fight
- Violate rights

Randomly capitalize **Nouns** to make **Things** seem more important, significant
3) Where to Start (Carrots)

Enforcing What?

Investigation of violations of:

- District order or permit
- Stipulation agreement
- Watershed Law
- District Rules
HOW TO GET COMPLIANCE without elevated Enforcement Tools:

• Communicate expectations with permittees early
• Build relationships and maintain open communication channels
• Set clear performance/correction expectations with deadlines; follow up
• Provide detailed inspection reports with photos for added clarity
• Document correspondence and track violations
4) Dropping the Hammer

- Issue Notice of Probable Violation
- Schedule Board Compliance Hearing
- Board Compliance Hearing
- Issue Compliance Order
- Criminal Misdemeanor
- Use Permit Security Funds to Take Corrective Action
- Go to District Court
4) Dropping the Hammer ...

somewhere other than on your own foot

*Always mindful of due process:*

- Notice (written, with details)
- Opportunity to be heard (by board)
4) Dropping the Hammer ...

somewhere other than on your own foot

• **Recordkeeping**

• **Compliance with procedure**

• **Analysis:**
  - What is apparent violation?
  - What/where is harm? Risk?
  - How can risk be mitigated?

• **Help, counsel provides**
COMMON VIOLATION EXAMPLES

Wetland Fill
COMMON VIOLATION EXAMPLES

Wetlands Fill/Excavation
COMMON VIOLATION EXAMPLES
QUESTIONS & DISCUSSION ON SPECIFIC PERMIT VIOLATIONS?
THANK YOU!

Maggie Karschnia  
Prior Lake-Spring Lake WD  
mkarschnia@plslwd.org  
(952) 447-9808

Forrest Kelley  
Capitol Region WD  
forrest@capitolregionwd.org  
(651)-644-8888

Michael Welch  
Smith Partners PLLP  
Welch@smithpartners.com  
(612) 344-1400