

12.0 Financial Assurances

12.1 Policy

It is the policy of the District to protect and conserve the water resources of the District by requiring a bond or other financial performance assurance with a permit application to ensure adequate performance of the authorized activities and compliance with the District Rules.

12.2 Requirement

The District may require a performance bond, letter of credit or other financial assurance in a form approved by the District for an activity regulated under these Rules. A performance financial assurance will not be required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.

12.3 Criteria

Financial assurances required pursuant to this rule must be issued in compliance with the following criteria:

- 12.3.1 The financial assurance shall be a performance bond, letter of credit, cash deposit or other form acceptable to the District, and a commercial financial assurance shall be from an issuer licensed and doing business in Minnesota. Financial assurance templates may be obtained from the District web site (www.ninemilecreek.org) and also are available from the District office.
- 12.3.2 The financial assurance shall be issued in favor of the District and conditioned upon the applicant's performance of the activities authorized in the permit in compliance with the terms and conditions of the permit and all applicable laws, including the District's rules, and payment when due of any fees or other charges authorized by law, including the District's rules. The financial assurance shall state that in the event the conditions of the financial assurance are not met, the District may make a claim against it. In the event that the District makes a claim against a financial assurance, the full amount of the financial assurance required must be restored within 45 days.
- 12.3.3 The financial assurance must be effective for at least three years from the date of issuance and shall contain a provision that it may not be canceled without at least thirty (30) days prior written notice to the District.

- 12.3.4 The financial assurance shall be submitted by the permit applicant, but the financial assurance principal may be either the landowner or the individual or entity undertaking the proposed activity.
- 12.3.5 No financial assurance will be released except pursuant to the terms of section 12.4.
- 12.3.6 No interest will be paid on financial assurances held by the District.
- 12.3.7 The amounts of financial assurances required by the District will be set by the Board of Managers by resolution. The schedule of financial assurance amounts will be maintained on the District website (www.ninemilecreek.org) and also will be available from the District office. Financial assurance amounts will be set as necessary to cover the following potential liabilities to the District:
- a field inspection, monitoring and related fees authorized under Minn. Stat. § 103D.345;
 - b the cost of maintaining and implementing erosion and sediment control and other protective measures required by the permit;
 - c the cost of remedying damage resulting from noncompliance with the permit or for which the permittee is otherwise responsible.
- 12.3.8 When a cash escrow is to be provided to fulfill a District financial assurance requirement, the permittee/escrow provider will be required as a condition of permit issuance, transfer or renewal to enter into a cash escrow agreement with the District. Permit approval may be revoked for failure to comply with this requirement. A cash escrow agreement template will be maintained on the District website (www.ninemilecreek.org) and also will be available from the District office.

12.4 Financial Assurance Release

On written notification of completion of a project, the District will inspect the project to determine if the project has been constructed in accordance with the terms of the permit and District Rules. If the project is completed in accordance with the terms of the permit and District Rules, and there is no outstanding balance for unpaid permit fees, the District will release the financial assurance.

12.4.1 Final inspection compliance constituting grounds for financial assurance release includes, but is not limited to:

- a demonstration by the permittee and confirmation by the District that the site has been vegetated and stabilized to prevent erosion

- and sedimentation per subsection 5.3.3 and that erosion and sedimentation controls have been removed;
- b demonstration and confirmation that stormwater management features have been constructed or installed and are functioning as designed and permitted;
- c payment of all outstanding fees to the District.

The District may return a portion of the financial assurance if it finds that the entire amount is no longer required to ensure compliance with the permit conditions and District rules. If the District has not inspected the project and made a determination about the project's compliance with the above criteria within 45 days of District receipt of written notification of project completion, the financial assurance is deemed released unless the District notifies the permittee that final inspection compliance matters remain outstanding. In the event that a financial assurance is released through expiration of the time for confirmation of final inspection compliance, the District will provide a writing releasing the financial assurance if needed to meet the issuer's requirements.