

18681 Lake Drive East Chanhassen, MN 55317 952-607-6512 www.rpbcwd.org

Riley Purgatory Bluff Creek Watershed District Permit Application Review

Permit No: 2024-064

Considered at Board of Managers Meeting: October 2, 2024

Received complete: September 3, 2024

Applicant: CenterPoint Energy, Madelyn Nierengarten

Consultant: NA

Project: CenterPoint Energy (CenterPoint) is proposing several waterbody crossings to provide

natural gas service.

Location: Coulter Boulevard, Chanhassen, MN **Reviewer:** Scott Sobiech, PE, Barr Engineering

Proposed Board Action			
resolutions based on the 2024 meeting of the mar	permit report that follow nagers. Resolved that the	seconded adoption of the following vs and the presentation of the matter at the October 2, application for Permit 2024-064 is approved, subject Recommendations section of the attached report;	
Resolved that on determination by the RPBCWD administrator that the conditions of approval have been affirmatively resolved, the RPBCWD president or administrator is authorized and directed to sign and deliver Permit 2024-064 to the applicant on behalf of RPBCWD.			
Upon vote, the resolution	ns were adopted,	[VOTE TALLY].	

Rule Conformance Summary

Rule	Issue	Conforms to RBPCWD Rules?	Comments
В	Floodplain Management and Drainage Alterations	Yes	
С	Erosion Control Plan	Yes	
D	Wetland and Creek Buffer	Yes	
G	Waterbody Crossing and Structures	Yes	
L	Permit Fee	Yes	\$3000 received August 8, 2024. The applicant must replenish the permit fee deposit to the original amount due before the permit will be issued. As of September 26, 2024 the amount due is \$1,271

Rule	Issue	Conforms to RBPCWD Rules?	Comments
М	Financial Assurance	See Comment	See rule specific condition M1 related to the performance bond provided for \$10,000 needing revisions.

Project Background

CenterPoint Energy is proposing installation of approximately 796 linear feet of 2-inch-diameter and 1,835 linear feet of 4-inch-diameter pipeline to provide or improve natural-gas service within utility easements, the right-of-way for Coulter Boulevard, and across the Xcel service center facility in Chanhassen. At the same time, CenterPoint will abandon 327 feet of natural gas pipeline of varying diameters within the same area. The new pipeline will be installed using a combination of the directional boring and plow-in trench methods, with additional excavations for tie-ins. Excavations will be approximately 5-foot-wide by 5-foot-long, as needed. The depth of the excavations will be a maximum of 4 feet. Excavated material will be temporarily stored alongside the excavation and backfilled to preconstruction contours upon Project completion.

Because the proposed land disturbing activities do not involve creation of new impervious surface, reconstruction of existing impervious surface, or grading that materially alters stormwater flow at the site boundary, Rule J, subsection 2.2e, RPBCWD stormwater management rule does not impose requirements on this project. In addition, the utility work within the right of way of Coulter Boulevard is within a linear corridor, thus considered a linear project.

The water resources within the project site or downgradient of the proposed activities are summarized in the following table. The table also provides a brief explanation of how each resource is implicated in the permit application review process.

Water resource impacted by proposed project

Water Resource	Projected resource impacts
Northeast Tributary of Bluff Creek	A watercourse with two proposed gas line crossings proposed to be horizontally drilled below the watercourse.
Bluff Creek	A public watercourse with a gas line crossing proposed to be horizontally drilled below the watercourse. The applicant is seeking a project specific permit from the state Department of Natural Resources for this crossing.

The project site information is summarized below:

Description	Area (acres)
Total Site Area	21.82
Existing Site Impervious	9.551
Post-Construction Site Impervious	9.551
Change in Site Impervious Area	0.0

Description	Area (acres)
Disturbed Impervious Surface	0.0
Total Disturbed Area	0.12

Exhibits:

- 1. Permit Application received August 2, 2024 (applicant was notified of an incomplete application on August 5, 2024; information completing the application was received on September 3, 2024)
- 2. Project Narrative Memorandum received August 8, 2024
- 3. Design Plans Sheets dated July 24, 2024 (revision dated August 15, 2024)
- 4. Site plans dated August 1, 2024 (revised August 15, 2024)
- 5. Plat for Stone Creek Town Office Condominiums showing drainage and utility easement received September 3, 2024
- 6. Natural Gas Service Application from Xcel Energy to CenterPoint Energy dated February 15, 2024.
- 7. Response to comments received September 25, 2024

Response to comments received September 3, 2024Rule Specific Permit Conditions

Rule B: Floodplain Management and Drainage Alterations

Because the applicant proposes to disturb land below the 100-year flood elevation of Bluff Creek for the excavations associated with boring pits adjacent to Bluff Creek, the project must conform to the requirements in the RPBCWD Floodplain Management and Drainage Alteration rule (Rule B, Subsection 2.1). The boring pits adjacent to northeast tributary of Bluff Creek are outside the 100-year floodplain adjacent to the watercourse and no disturbance or no fill is proposed in the floodplain; therefore the northeast tributary of Bluff Creek crossings do not trigger Rule B.

The proposed work in the Bluff Creek floodplain conforms to Rule B, Subsections 3.1 because no buildings are proposed to be constructed or reconstructed as part of the project. Placement of fill below the 100-year flood elevation is prohibited unless fully compensatory storage at the same elevation for fill in the floodplain of a watercourse and within the floodplain of the same waterbody is provided (Rule B, Subsection 3.2). Because the drawings indicate the site will be restored to preconstruction elevations, the proposed project conforms to Rule B, Section 3.2.

Because the proposed land disturbing activity does not alter surface flows of Bluff Creek, the project conforms to subsection 3.3. Because the applicant does not propose any new or reconstructed impervious surface, Rule B, subsection 3.4 does not impose requirements on the project. The applicant has submitted plans requiring appropriate erosion prevention and sediment control measures in alignment with RPBCWD Rule C (subsection 3.5) A note on the plans requires that activities must be conducted to minimize the potential transfer of aquatic invasive species conforming to Rule B, Subsection 3.6.

The proposed project conforms to the floodplain management and drainage alteration requirements of Rule B.

Rule C: Erosion and Sediment Control

Because the applicant proposes 0.12 acres of land-disturbing activities, the project must conform to the requirements in the RPBCWD Erosion and Sediment Control rule (Rule C, Subsection 2.1).

The plans include installation of perimeter erosion control, vegetation establishment, daily inspection, placement of a minimum of 6 inches of topsoil with 5 percent organic matter, minimization of compaction during construction, and retention of native topsoil onsite. The applicant identified Madelyn Nierengarten (madelyn.nierengarten@centerpointenergy.com, 612.321.4494) as the person responsible for erosion prevention and sediment control during construction.

The proposed project conforms to the erosion and sediment control requirements of Rule C.

Rule D: Wetland and Creek Buffers

Because the proposed work triggers a permit under RPBCWD Rule B and G for the utility crossings rehabilitation work and Bluff Creek is a public waters watercourse, Rule D, Subsections 2.1a and 3.1c require buffer adjacent to the creek.

Bluff Creek flows through the project site and requires an average buffer width of 50 feet from the creek centerline, minimum 30 feet in accordance with Rule D, Subsection 3.2.b.v for a public waters watercourse. Because subsection 3.2f only requires buffer on property owned by the applicant and subject to a RPBCWD permit and CenterPoint Energy does not have land-use rights allowing planting and maintenance of install buffer along Bluff Creek, no buffer can be provided.

Rule G: Waterbody Crossings and Structures

Because the project will horizontally drill below the northeast tributary to Bluff Creek, a watercourse, the project requires conformance with RPBCWD's Waterbody Crossings and Structures Rule (Rule G). Only the criteria in subsections 3.1b, 3.4 and 3.7 imposes requirements on the project. (As noted, CenterPoint is applying for a project-specific permit from the DNR for the crossing under Bluff Creek, so RPBCWD's waterbody-crossing requirements do not apply to that portion of the project under subsection 2.1 of the rule.)

This work addresses a demonstrated need to supply natural gas to the recently constructed Xcel service center facility (Rule G, Subsection 3.1b) because gas service does not currently reach the Xcel site.

Because the applicant provided site plans requiring a 3 foot minimum clear below the bottom of the northeast tributary to Bluff Creek and that the entrance and exit holes (i.e., boring pits) be setback at least 50 feet from the banks of the watercourse, the project complies with Rule G, Subsection 3.4.

The site plan includes a note directing the contractor that no work affecting the creek bed shall occur between March 15 and June 15 as required in Rule G, Subsection 3.7a. Banks will be immediately stabilized after completion of permitted work and revegetated as soon as growing conditions allow (Rule G, Subsection 3.7b). A note is included on the plan sheet indicating the project will be constructed so as to minimize the potential transfer of aquatic invasive species (e.g., zebra mussels, Eurasian watermilfoil, etc.) to the maximum extent possible (Rule G, Subsection 3.7c).

Rule G, Subsection 3.7d requires compliance with the applicable criteria in subsections 3.3 of Rule F. Because the applicant does not propose to disturb the bed or banks of the northeast tributary to Bluff Creek, subsection 3.7d does not impose requirements on the project.

The permit applicant provided a draft maintenance declaration for the waterbody crossing for RPBCWD approval, in accordance with Rule G, Section 5. Because the proposed installation of the gas line using horizontal drilling does not result in maintenance requirements for ongoing water resource protection, Rule G, Subsection 5 does not impose requirements on the project. The proposed project conforms to the waterbody crossings and structures requirements of Rule G.

Rule L: Permit Fee Deposit:

The RPBCWD permit fee schedule adopted in February 2020 requires permit applicants to deposit \$3,000 to be held in escrow and applied to cover the \$10 permit-processing fee and reimburse RPBCWD for permit review and inspection-related costs and when a permit application is approved, the deposit must be replenished to the applicable deposit amount by the applicant before the permit will be issued to cover actual costs incurred to monitor compliance with permit conditions and the RPBCWD Rules. A permit fee deposit of \$3,000 was received on August 5, 2024. The applicant must replenish the permit fee deposit to the original amount due before the permit will be issued. Subsequently, if the costs of review, administration, inspections and closeout-related or other regulatory activities exceed the fee deposit amount, the applicant will be required to replenish the deposit to the original amount or such lesser amount as the RPBCWD administrator deems sufficient within 30 days of receiving notice that such deposit is due. The administrator will close out the relevant application or permit and revoke prior approvals, if any, if the permit-fee deposit is not timely replenished.

L1. The applicant must replenish the permit fee deposit to the original amount due before the permit will be issued. As of September 26, 2024 the amount due is \$1,271.

Rule M: Financial Assurance:

	Unit	Unit Cost	# of Units	Total
Rule C: Erosion Control				
Perimeter Control	LF	\$2.50	1,650	\$4,125
Restoration	Ac	\$2,500	0.12	\$300
Contingency (10%)		10%		\$442
Total Financial Assurance				\$4,867

CenterPoint Energy wants to rely on an existing performance bond (Bond no. 022232328) dated February 2022 in the amount of \$10,000 for the financial assurance for this permit. While the bond amount is sufficient to cover this permit, RPBCWD legal counsels review of the existing bond identified several shortcomings (e.g., no permit(s) identified; no applicable rules are identified; and drafting errors). The following revisions are needed in the financial assurance document:

M1.Provide a revised draft performance bond addressing the above shortcomings for RPBCWD review and approval prior to execution.

Applicable General Requirements:

- 1. The RPBCWD Administrator and Engineer shall be notified at least three days prior to commencement of work.
- 2. Construction must be consistent with the plans, specifications, and models that were submitted by the applicant that were the basis of permit approval. The date(s) of the approved plans, specifications, and modeling are listed above and on the permit. The granting of the permit does not in any way relieve the permittee, its engineer, or other professional consultants of responsibility for the permitted work.
- 3. The grant of the permit does not relieve the permittee of any responsibility to obtain approval of any other regulatory body with authority.
- 4. The issuance of this permit does not convey any rights to either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
- 5. In all cases where the doing by the permittee of anything authorized by this permit involves the taking, using or damaging of any property, rights or interests of any other person or persons, or of any publicly owned lands or improvements or interests, the permittee, before proceeding therewith, must acquire all necessary property rights and interest.
- 6. RPBCWD's determination to issue this permit was made in reliance on the information provided by the applicant. Any substantive change in the work affecting the nature and extent of applicability of RPBCWD regulatory requirements or substantive changes in the methods or means of compliance with RPBCWD regulatory requirements must be the subject of an application for a permit modification to the RPBCWD.
- 7. If the conditions herein are met and the permit is issued by RPBCWD, the applicant, by accepting the permit, grants access to the site of the work at all reasonable times during and after construction to authorized representatives of the RPBCWD for inspection of the work.

Findings

- 1. The proposed project includes the information necessary, plan sheets and erosion control plan for review.
- 2. The proposed project conforms to Rules B, C, D and G.
- 3. The proposed project will conform to Rule M if the condition listed above is met.

4. The work for Bluff Creek crossing triggers state regulatory requirements administered by the Department of Natural Resources (i.e., require a Work in Public Waters permit). The applicant is pursuing obtaining the necessary DNR approval.

Recommendation:

Approval of the permit contingent upon:

- 1. Continued compliance with General Requirements.
- 2. Receipt of a revised draft performance bond and addresses the above shortcomings for RPBCWD review and approval. After RPBCWD approval, the applicant must provide RPBCWD a legally executed document.
- 3. The applicant must replenish the permit fee deposit to the original amount due before the permit will be issued. As of September 26, 2024 the amount due is \$1,271.













