



Overview of MN Drainage Law Changes Since 1991

MPDM Outreach Workshops
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Pertinent Facts about Chapter 103E Revisions Since 1991

- **Chapter 103E Drainage** – currently includes 106 sections
- 33 sections revised since 1991, including addition of a few
- The stakeholder Drainage Work Group (DWG) recommended revisions of 26 sections and adding 1 section, in 6 sets of consensus recommendations since 2007
- Other entities that proposed revisions: Legislators on behalf of constituents or on their own, Revisor of Statutes, BWSR



Drainage Work Group Membership

Meeting
attendance
range 25 - 45

Drainage Authorities	AMC – Association of Minnesota Counties (and some county staff)
	MAWD – Minnesota Association of Watershed Districts
Farm Groups	MFB – Minnesota Farm Bureau
	MFU – Minnesota Farmers Union
	Other Ag and Producer Groups (MAWRC, MCGA, MSGA, etc.)
Environmental Groups	MCEA – Minnesota Center for Environmental Advocacy
	FWLA – Fish and Wildlife Legislative Alliance
	MCF – Minnesota Conservation Federation
Other Associations	MASWCD – MN Assn. of Soil and Water Conservation Districts
	MVA – Minnesota Viewers Association
	MACATFO – MN Assn. of Co. Auditors Treasurers Financial Officers
	MADI – Minnesota Association of Drainage Inspectors
	RRWMB – Red River Watershed Management Board
	MAT – Minnesota Association of Townships
	MRCC – Minnesota Rural Counties Caucus
State Agencies +	BWSR, DNR, MDA, MPCA + UMN
Legislature	House and Senate staff



Section 103.005 Definitions.

(first section of Chapter 103E)

- 2002 – : “Municipality” revised, “Water Management Authority” added when Section 103E.812 **Transfer of all or Part of Drainage System.** was added to Chapter 103E
- 2013 – DWG: “Director” of DNR Division of Waters revised to “Division of Ecological and Water Resources”
- 2013 – DWG: “Secretary” of a watershed district drainage authority added



Section 103.011 Drainage Authority Powers.

- 2000 – BWSR recommended addition of Subd. 5. **Use of external sources of funding.**
 - Public program / drainage system partnerships – clearly enabled for wetland restorations, WQ improvements, flood control involving Chapter 103E drainage systems
 - Authorizes drainage authorities to accept external funding and to use drainage system funds in the watershed of the drainage system for these purposes



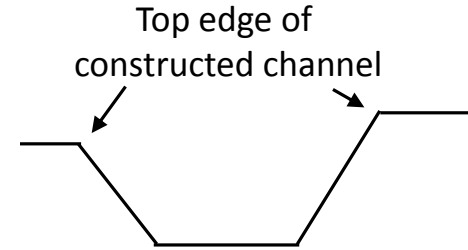
Section 103.015 Considerations Before Drainage Work is Done.

- 2014 – DWG recommended significant revisions
- Goal was to better enable multipurpose water management
 - Must **consider** environmental, land use, and multipurpose water management criteria for “drainage projects”
 - More clearly include “adequacy of the outlet” in criteria
 - Must **investigate** external funding sources for multipurpose when planning “drainage projects” and petitioned repairs – prior to order based on prelim. engr’s report, or repair report



Section 103.021 Ditches Must be Planted with Perennial Vegetation.

- 2007 – DWG recommended:
 - Clarify from where to measure buffer strips
 - Allow perennial vegetation other than grass
 - Provide permissive authority by adding Subd. 6. **Incremental implementation of vegetated ditch buffer strips and side inlet controls.** – which can be done as a repair





Section 103.065 Drainage Inspectors.

- 2010 – DWG recommended revisions, with goals to:
 - Clarify applicability for watershed district drainage authorities
 - Require all drainage authorities to have a drainage inspector
- 2014 – Rep. Hansen championed addition of a provision prohibiting county commissioners from serving as a drainage inspector



Section 103.067 Ditch Buffer Strip Annual Reporting.

- 2007 – Rep. Hansen championed addition of this provision
 - DWG members helped craft language for calendar year reporting requirements
 - Since 2007, BWSR requests and compiles annual reporting from drainage authorities (summaries on BWSR website, Drainage page)



Section 103.081 Crimes Related to Drainage Systems; Penalties.

- 2005 –
 - Subd. 2a. **Planting trees over public tile.** – prohibition of planting trees over Chapter 103E public tile without permission from the drainage authority
 - Subd. 2b. **Planting trees over private tile.** – prohibition of planting trees over private tile without permission from persons benefited by the drain tile



Section 103.101 Drainage Proceeding and Construction Records.

- 2013 – DWG recommended adding:
 - Subd. 4a. **Reestablishing records.** – requires investigation and report by a MN P.E. using existing records and evidence to define alignment, cross section, profile, structure characteristics, and right-of-way
 - Subd. 5a. **Transferring records.** – requires transfer of records to a watershed district associated with transfer of a drainage system, and enables authenticated copies of records



Sec. 103.227 Impounding, Rerouting and Diverting Drainage System Waters.

- 2010 – DWG recommended significant revisions to:
 - Enable rerouting part of a Chapter 103E drainage system
 - Enable \$ partnerships of public programs & drainage systems
 - Clarify engineer’s investigation and report requirements
 - Clarify flowage easement and permit requirements
- 2013 – DWG: add in Subd. 1. **Petition.** “or to incorporate wetland or water quality enhancing elements as authorized by section 103E.011, subdivision 5.”



Section 103.315 Assessment of Drainage Benefits and Damages.

- 2007 – DWG recommendation:
 - Add Subd. 8. **Extent of damages.**, para. (a), clause (5): to address costs to restore a practice existing under a federal or state conservation program damaged by a drainage project
- 2016 – DWG recommendation:
 - Add Subd. 8. **Extent of damages.**, para. (b): requires viewers and drainage authorities to consider the land use prior to buffer strip or alternative practice installation under the Buffer Law in determining the fair market value of the property and associated damages



Section 103.701 Repairs.

- 1993 – Definition of “repair” revised to include:
 - Incidental straightening of a tile system
 - Replacement of tile with next larger size, if original size not readily available
- 1996 – Added wetland “preservation” in then Subd. 6. **Wetland restoration and mitigation.**
- 2003 – Added Subd. 5a. **Compensation to landowners instead of bridge or culvert repair.** – for removal of a private crossing



Section 103.701 Repairs.

- 2007 – DWG recommendation:
 - Add Subd. 7. **Restoration; disturbance or destruction by repair.** – applies to federal or state program conservation practices – must restore if damage
- 2013 – DWG recommendations:
 - Revised repair definition: “condition” changed to “hydraulic capacity” to enable a 2-stage ditch for a petitioned repair
 - Revised Subd. 6. **Wetland restoration and replacement; water quality protection and improvement.** to include: “incorporation of measures to reduce channel erosion and otherwise protect or improve water quality”. This subd. enables rerouting to preserve a wetland, and wetland mitigation.



Section 103.705 Repair Procedure.

- 2007 – DWG recommendation:
 - Add in Subd. 1. **Inspection.**: “Open drainage ditches shall be inspected at a minimum of every five years when no violation of section 103E.021 is found and annually when a violation of section 103E.021 is found, until one year after the violation is corrected.”
- 2008 – References to revised Uniform Municipal Contracting Law were updated by the Revisor of Statutes



Section 103.715 Petitioned Repairs.

- 2013 – DWG recommendation:
 - Along with revised “repair” definition in Sec. 103E.701 –
 - Revised Subd. 6. **Repair by resloping ditches, incorporating multistage ditch cross-section, leveling spoil banks, installing erosion control, or removing trees.** – to enable a 2-stage ditch via petitioned repair
- 2-stage ditch/channel most applicable where there is perennial low flow – can preserve aquatic habitat and reduce ditch maintenance, with the same “hydraulic capacity”



Section 103.805 Removing Property from Drainage System.

- 2010 – DWG recommended:
 - Separate “removal of property” from “partial abandonment of a drainage system”
 - Clarify due process for removal of property from a system
 - Adopt the test: “that the waters from the petitioner’s property have been diverted from the drainage system, or that the property cannot significantly or regularly use the drainage system”



Section 103.806 Partial Abandonment of Drainage System.

- 2010 – DWG recommended:
 - Separate from Section 103E.805 **Removing Property from Drainage System.**
 - Substantially clarify due process for partial abandonment
 - Maintain the test: “does not serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is not of a substantial public benefit and utility”



Section 103.812 Transfer of All or Part of Drainage System

- 2002 –
 - Petitioned transfer of a Chapter 103E drainage system to a water management authority, including a municipality
 - Typically most applicable where urban development has expanded over part of a Chapter 103E drainage system
 - Includes substantial due process to protect drainage outlet for benefited landowners of the drainage system
 - Requires transferee engineering report about the drainage system characteristics and may require a technical panel



Questions?