



# Procedure 7: Failure to Implement

## Buffer Law Implementation

Amended to Replace Board Resolution 15-95, August 25, 2016  
BWSR Board Adopted June 28, 2017

This document was adopted by the Board of Water and Soil Resources (BWSR) pursuant to Minn. Stat. §103F.48, subd. 8 to describe how BWSR will implement authority to withhold funds from soil and water conservation districts, counties, and watershed districts that fail to implement Minn. Stat. §103F.48. It is a guide; not a rule. It is not a statement of general applicability and future effect. It is not designed to amend statute. Statutes are subject to change and if the language of this procedure differs from statute, the statute controls. In addition, users of the document are encouraged to obtain legal advice of an attorney regarding their specific application of Minn. Stat. §103F.48 and their own legal authorities.

### Procedure

BWSR's definition of failure to implement/non-implementation of the Buffer Law is when a county, watershed district, metropolitan watershed management organization or soil and water conservation district (SWCD) has been determined to have failed to implement one or more of the statutory duties listed under statutory duties.

#### Activities not Subject to Failure to Implement

All other activities conducted by a SWCD, county, watershed district, or metropolitan water management organization, separately or jointly, that is associated with coordinating activities, collecting and sharing information, education and outreach to landowners, providing financial assistance, and carrying out other statutory authorities are not to be considered required implementation under Minn. Stat. § 103F.48 and as such will not be considered as part of a failure to implement/non-implementation determination by BWSR.

### Background

Minn. Stat. §103F.48 establishes a requirement for landowners to maintain a buffer on or before the dates and widths as follows:

- November 1, 2017 – 50-foot average width, 30-foot minimum width, buffers must be in place on lands adjacent to public waters as identified and mapped on a Buffer Protection Map (subd. 3(a)1 and 3(e)1))
- November 1, 2018 – 16.5-foot minimum width buffers must be in place on lands adjacent to public ditches as identified and mapped on a Buffer Protection Map (subd. 3(a)2 and 3(e)2))

The Buffer Law also includes prescribed assistance and monitoring roles for SWCDs and elected enforcement authorities for counties and watershed districts. The Buffer Law also provides for a BWSR compliance role where a county or watershed district do not accept jurisdiction and for BWSR to take steps if a local government fails to implement their prescribed or elected duties. This BWSR authority is as follows:

Minn. Stat. § 103F.48, subd. 8. The board may withhold funding from a local water management authority with jurisdiction or a soil and water conservation district that fails to implement this section, or from a local water management authority that fails to implement subdivision 4. Funding may be restored upon the board's approval of a corrective action plan.

**Program Need:**

- 1) Local governments required to carry out duties or that are considering whether to elect jurisdiction under the Buffer Law need to know what the standard is for sufficient implementation.
- 2) BWSR needs to have a consistent basis for potential actions to withhold funding for a local government's insufficient implementation of statutory responsibilities.

## Statutory Basis

Minn. Stat. § 103F.48, subd. 7. **Corrective actions.**

Minn. Stat. § 103F.48, subd. 8. **Funding subject to withholding.**

Minn. Stat. § 103F.48, subd. 8 applies to SWCDs and local water management authorities. Local water management authority is defined as (Minn. Stat. § 103F.48, subd 2(g)): a watershed district, metropolitan water management organization, or county operating separately or jointly in its role as a local water management authority under chapter 103B or 103D. Therefore the local governments that Subd. 8 applies to include: SWCDs, counties, watershed districts, and metropolitan watershed management organizations.

Minnesota Statutes 103F.48 establishes the following authorities and responsibilities for local governments to implement the Buffer Law:

### SWCDs

- A. May approve alternative practices based on local conditions consistent with the Field Office Technical Guide. (subd. 3(b))
- B. May evaluate compliance when requested by a landowner and issue a Validation of Compliance if applicable. (subd. 3(d))
- C. Must develop, adopt and submit to each local water management authority a summary of watercourses (aka "other watercourses") by July 1, 2017 for inclusion in the local water management authorities' plan. (subd. 4)
- D. Must assist landowners with implementation of the Buffer Law including: planning, technical assistance, implementation of approved alternative practices, and tracking progress towards compliance with the requirements provided in Minn. Stat. § 103F.48, Subd. 3. (subd. 6)
- E. Must notify the county or watershed district with jurisdiction when it determines a landowner is not in compliance. (subd. 7)
- F. Must grant a conditional waiver to a landowner: (a) who has applied for and maintained eligibility for financial assistance within one year of the compliance dates in Minn. Stat. § 103F.48, subd. 3(e); (b) are subject to a drainage proceeding; or (c) who has filed a parcel-specific compliance plan (Laws of Minnesota 2017, 1<sup>st</sup> Special Session, Chapter 4, Article 4, Section 146.
- G. Must accept a parcel specific riparian protection compliance plan from a landowner or authorized agent that are filed with the SWCD by November 1, 2017.

### Counties and Watershed Districts

- A. Must incorporate the SWCD summary of watercourses (aka "other watercourses") recommendations into its comprehensive local water management plan by July 1, 2018. (subd. 4)
- B. If electing jurisdiction to enforce the buffer requirement as identified on the Buffer Protection Map, must provide the landowner with a list of corrective actions needed to come into compliance and a practical

timeline to meet the riparian protection requirements when notified by the SWCD that a landowner is not in compliance. A copy of the corrective action must be provided to BWSR. (subd. 7(a))

**Metropolitan Watershed Management Organizations**

- A. Must incorporate the SWCD summary of watercourses (aka “other waters”) recommendations into its comprehensive watershed management plan by July 1, 2018. (subd. 4)