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[note]

⇒ Statutory authorities are not updated.

CHAPTER 8410
BOARD OF WATER AND SOIL RESOURCES
LOCAL WATER MANAGEMENT

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METROPOLITAN AREA LOCAL WATER MANAGEMENT

8410.0010 SCOPE.

Upon adoption, parts 8410.0010 to 8410.0130 apply to the general administration of metropolitan watershed management activities, and to amendments to existing plans approved by the board one year or later after adoption of these rules. A watershed management organization shall amend its plan and submit amendments to the board according to its amendment schedule and amendment procedures consistent with this chapter.

[BWSR approval of plans under existing rule up to one year after new rules are promulgated allows for plan revisions already underway to be approved.]

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0020 DEFINITIONS.

Subpart 1. **Applicability.** The definitions in this part and in Minnesota Statutes, section 103B.205, apply to parts 8410.0010 to 8410.0150 and have the meanings given them.

Subp. 2. **Board.** "Board" means the Minnesota Board of Water and Soil Resources created by Minnesota Statutes, section 103B.101.

Subp. 3. **Capital improvement.** "Capital improvement" means a physical improvement that has an extended useful life. A capital improvement is not directed toward maintenance of an in-place system during its life expectancy.

Subp. 4. **Capital improvement program.** "Capital improvement program" has the meaning given it in Minnesota Statutes, section 103B.205, subdivision 3.

Subp. 5 **Groundwater plan.** "Groundwater plan" means a county plan approved by the board and adopted under Minnesota Statutes, section 103B.255.

Subp. 6. **Local comprehensive plan.** "Local comprehensive plan" has the meaning given "comprehensive plan" in Minnesota Statutes, section 473.852, subdivision 5.

Subp. 7. **Local government unit.** "Local government unit" has the meaning given it in Minnesota Statutes, section 473.852, subdivision 7.

Subp. 8. **Local plan.** "Local plan" has the meaning given "local water management plan" in Minnesota Statutes, section 103B.235.

Subp. 9. **Metropolitan Council.** "Metropolitan Council" means the Metropolitan Council created by Minnesota Statutes, section 473.123.

Subp. 10. **Metropolitan Water Management Act.** "Metropolitan water management act" has the meaning given it in Minnesota Statutes, sections 103B.201 to 103B.255.

Subp. 11. **Minor watershed unit.** "Minor watershed unit" means each of the approximately 5,600 minor watershed units delineated on the state watershed boundaries map prepared under the requirements of Laws 1977, chapter 455, section 33, subdivision 7, paragraph (a).

Subp. 12. **Official controls.** "Official controls" has the meaning given it in Minnesota Statutes, section 473.852, subdivision 9.

Subp. 13. **Plan.** "Plan" means the watershed management plan prepared by a watershed management organization or county as required by Minnesota Statutes, section 103B.231, subdivision 1.

Subp. 14. **Plan review agencies.** "Plan review agencies" means the Metropolitan Council, the Department of Agriculture, the Department of Health, the Department of Natural Resources, the Pollution Control Agency and the Board of Water and Soil Resources.

Subp. 15. **Plan review authorities.** "Plan review authorities" means the Metropolitan Council, the Department of Agriculture, the Department of Health, the Department of Natural Resources, the Pollution Control Agency, the Board of Water and Soil Resources, and counties, cities, towns, and soil and water conservation districts partially or wholly within the watershed management organization as defined in Minnesota Statutes, section 103B.231, subdivisions 7 and 9.

Subp. 16. **Public waters.** "Public waters" means waters of the state identified as public waters under Minnesota Statutes, section 103G.005, subdivision 15.

Subp. 17. **Seven-county metropolitan area.** "Seven-county metropolitan area" means the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, excluding the corporate boundaries of the cities of Hanover and New Prague.

Subp. 18. **Subwatershed.** "Subwatershed" means a hydrologic area less than the entire area under the jurisdiction of a watershed management organization.

Subp. 19. **Watershed.** "Watershed" means a drainage area with boundaries that are substantially coterminous with those of an aggregation of contiguous minor watershed units possessing similar drainage patterns and that cross the borders of two or more local government units.

Subp. 20. **Watershed district.** "Watershed district" means a district established under Minnesota Statutes, chapter 103D.

Subp. 21. **Watershed management organization or organization.** "Watershed management organization" or "organization" means: (1) a watershed district wholly within the metropolitan area; or (2) a joint powers entity established wholly or partly within the metropolitan area by special law or by agreement that performs some or all of the functions of a watershed district that has the characteristics and the authority specified under Minnesota Statutes, section 103B.211. Counties may be watershed

management organizations if a joint powers watershed management organization does not perform and the responsibility for plan preparation is deferred to the counties. Lake improvement or conservation districts are not watershed management organizations.

Subp. 22. **Wetlands.** "Wetlands" has the meaning given it in Minnesota Statutes, section 103G.005, subdivision 19a.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0030 JOINT POWERS AGREEMENTS.

Subpart 1. **Requirements.** In addition to a description of any authorities adopted under the content requirements of joint powers agreements as outlined in Minnesota Statutes, section 103B.211, subdivision 1, joint powers agreements establishing a watershed management organization or amending an existing joint powers agreement shall, at a minimum, contain the following items:

- A. a purpose statement consistent with Minnesota Statutes, section 103B.201;
- B. a section defining the powers and duties of the organization;
- C. an official map based on parcels or a legal description defining the boundary of the organization;
- D. a section defining how the organization's members will be represented, with the total number of members on a joint powers board to be at least three;
- E. a section outlining meetings to be scheduled at least annually;
- F. a notification process for the agenda, location and time of meetings;
- G. procedures for annual establishment of a work plan and budget;
- H. a procedure for the establishment of an advisory committee, or other means of public participation;
- I. a formula for determining the share of the annual operating budget for each of the organization's members or a description of revenue generating authorities the organization will utilize;
- J. a section establishing the duties and terms of the officers of the organization;
- K. the process and responsibilities of the organization and its members for filling vacancies consistent with Minnesota Statutes, section 103B.227, subdivisions 1 and 2,;
- L. a section specifying the compensation for members of a joint powers board;

M. a section defining the voting requirements for decision making and capital improvements consistent with Minnesota Statutes, section 103B.211, subdivision 1, paragraph (c);

N. a requirement to adopt rules of order and procedure; and

O. the duration of the agreement and a process for dissolution that provides for at least 90 days' notice of the intent to dissolve to the affected counties and the board.

Subp. 2. **Updating.** Joint powers agreements must be in conformance with this chapter, as determined by the board, before the board makes a decision on a draft plan or plan amendment.

Subp. 3. **County membership.** A county may be a member of a joint powers agreement organization when the conditions described in Minnesota Statutes, section 103B.211, subdivision 3, are present.

[JPAs that are compliant with the current rule will not have to be amended to be compliant with the new revised rule]

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0040 REMOVAL OF ORGANIZATION REPRESENTATIVES.

Subpart 1. A manager of a watershed district or a member of a joint powers board may be removed from the position by a majority vote of the appointing authority before term expiration for violation of a code of ethics or bylaws of the watershed management organization or appointing authority or for malfeasance, nonfeasance, or misfeasance, after being provided an opportunity for a hearing before the appointing authority.

Subp. 2. A member of a joint powers board holding the position as an elected official who is no longer serving in that position, or is serving an indefinite term at the pleasure of the appointing authority, may be removed by the appointing authority at will.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227; 103D.311*

History: *17 SR 146*

WATERSHED MANAGEMENT ORGANIZATION PLANS

8410.0050 ISSUE IDENTIFICATION AND ASSESSMENT.

Subpart 1. **Priority Issues.**

A. Each plan shall identify priority issues in consideration of:

1. water management problems including prevention of future water management problems;
2. funding levels; and
3. regional, county, state and federal water management priorities that are identified under this part.

B. Priority issues must be evaluated, addressed and prioritized in the goals and implementation sections of the plan according to parts 8410.0080 and 8410.0090.

Subp. 2. **Advisory Committee.** The organization must establish an advisory committee, committees, or other means of public and technical participation acceptable to the board, for the purpose of making recommendations on a plan, plan amendment and plan implementation. The recommendations must address subpart 7. The process must be summarized in the plan or plan amendment.

Subp. 3. **Plan review agency notification and involvement in plan development.** Prior to the development of its plan, or plan amendment as determined by the board, each organization must send notification to each plan review agency of plan initiation and correspondence requesting the management expectation for the plan review agency's priority issues, summaries of relevant water management goals, and water resource information. The organization must allow at least 60 days for the information to be submitted. For information received within the prescribed time period, the organization must take into consideration the goals of the plan review agencies and identify in the plan or plan amendment any inconsistencies with the organization's goals.

[Plan amendment includes 'ten year' plan revisions. Generally, "plan amendment as determined by the Board" would only apply to 'ten year' plan revisions having to follow subps. 3-7.]

Subp. 4. **Review of local issues and controls.** Prior to the development of its plan, or plan amendment as determined by the board, each organization must send notification to each county, city, township and soil and water conservation district wholly or partially within the organization, and to known stakeholders including the Minnesota Department of Transportation, of plan initiation and correspondence requesting input that includes local water-related issues, water management goals, official controls and programs. The organization must allow at least 60 days for the information to be submitted. Known stakeholders include, but are not limited to, any entity that requests to be placed on the organization's mailing list. For information received within the prescribed time period, the organization must take into consideration the local water management goals and identify in the plan or plan amendment any inconsistencies with the organization's goals.

Subp. 5. **Initial Planning Meeting.** In the development of its plan and after completion of the time requirements under subparts 3 and 4, each organization must hold an initial planning meeting to receive, review and discuss input. Notification must be made to the plan review authorities, known stakeholders including the Minnesota Department of Transportation, and the general public. All notifications must occur at least two weeks before the meeting. The plan must document that an effective public input mechanism was utilized.

Subp. 6. **Relationship with other programs.** In consideration of subpart 1, item A, subitem 3, each plan, or plan amendment as determined by the board, shall identify and consider all relevant plans and programs in setting priority issues.

Subp. 7. **Assessment of Issues and Identification of Priority Issues.** In the development of its plan, or plan amendment as determined by the board, each organization must identify priority issues after assessing available information including the input received under this part, and data and trend analyses under part 8410.0070. The input received must be summarized and the assessment process for evaluating issues received, and goals received from the plan review authorities, must be included in the plan or plan amendment. The success of implementing the previous plan, if any, must be summarized and considered in identifying priority issues. Each organization shall coordinate its planning activities with contiguous organizations and counties conducting water planning.

BWSR: Each organization shall evaluate its planning activities with other watershed management organizations with jurisdiction in a local government unit and shall assess the activities and programs of contiguous organizations and counties conducting water planning.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0060 EXECUTIVE SUMMARY.

Each plan shall have a section entitled "Executive Summary." The summary must include the:

- A. purpose of the watershed management organization;
- B. a map of the organization;
- C. primary issues addressed in the plan;
- D. main goals in the plan;
- E. major actions in the plan: and
- F. the responsibilities of local governments related to implementation of the plan including any changes in responsibilities from the previous plan.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0070 LAND AND WATER RESOURCES.

Requirements. Each plan shall contain information and a general analysis based on existing records, plans and publications for the following elements or from a previous plan of the organization or a county groundwater plan. Information may be incorporated by reference if the data is generally described in the plan and the complete data and analysis is in a freely accessible location that is specified.

- A. topography;
- B. soil;
- C. general geology;
- D. precipitation;
- E. surface water resources including streams, lakes, wetlands, public waters and public ditches;
- F. water quality and quantity including trends of key locations and 100-year flood levels and discharges;
- G. groundwater resources, including groundwater and surface water connections if defined in an approved and adopted county groundwater plan;
- H. stormwater systems, drainage systems and control structures;
- I. regulated pollutant sources and permitted wastewater discharges;
- J. fish and wildlife habitat, rare and endangered species;
- K. water-based recreation areas;
- L. existing land uses and proposed development in local and metropolitan comprehensive plans;
and
- M. priority areas for wetland preservation, enhancement, restoration, and establishment.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0080 ESTABLISHMENT OF GOALS.

Subpart 1. **Requirements.** Each plan, or plan amendment as determined by the board, shall contain specific measurable goals that address subparts 2 through 7 in conjunction with the priority issues that are identified by the organization under part 8410.0050. The goals must be consistent with the intent of the metropolitan water management program purposes in Minnesota Statutes, section 103B.201, state and federal standards, and consider designated uses of the resources. The goals of the organization shall coordinate and attempt to resolve conflict with town, city, county, regional, or state

goals. The goals must contain sufficient detail to provide direction regarding what they should accomplish, provide direction to the organization's board, and allow for the success or failure of the goals to be quantified. A procedure must be included to evaluate progress for each measurable goal defined in this part at a minimum of every two years according to part 8410.0110, subpart 2, item E.

Subp. 2. **Water quantity.** Water quantity goals must be established to address priority issues, at a minimum, considering volume, peak rate, base flow, imperviousness or similar issues. The goals must recognize current trend direction and the fundamental relationship between water quantity and land use.

Subp. 3. **Water quality.** Water quality goals must be established to address priority issues considering the uses of the water resource and use attainability objectives. The goals must recognize current trend direction and the fundamental relationship between water quality and land use. If water quality goals are less stringent than state water quality standards the plan must acknowledge this.

Subp. 4. **Public drainage systems.** Public drainage system management goals must be established. The goals must define the organization's relationship to the drainage authority. The plan may recommend whether or not there are advantages to managing the drainage systems under the Metropolitan Water Management Act or through transferring the drainage authority pursuant to Minnesota Statutes, section 103E.812 and may determine whether drainage maintenance activities have the potential of adversely impacting any goal of the organization. The plan must generally describe the effect of the plan on existing drainage systems.

Subp. 5. **Groundwater.** Goals must be established to address groundwater-surface water interactions defined in approved and adopted county groundwater plans. In the absence of a county groundwater plan, organizations are encouraged to establish goals to address groundwater issues.

Subp. 6. **Wetlands.** Goals must be established for wetland management. The goals must recognize the fundamental relationship between wetland management and land use.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0090 IMPLEMENTATION ACTIONS.

Subpart 1. **Requirements.** Each plan shall contain prioritized implementation actions through the year the plan extends to that consists of administrative processes and programs to address the goals defined under part 8410.0080 and is consistent with the principles of part 8410.0050, subp. 1, item A. The programs described in subparts 2 through 6 must be included in each plan unless the plan sufficiently justifies that a program or program element is not needed. Each plan shall include a procedure to evaluate progress for the implementation actions at a minimum of every two years according to part 8410.0110, subpart 2, item E. Each plan shall:

- A. include a table that briefly describes each component of the implementation actions, the schedule, estimated cost and funding source for each component including annual budget totals;

B. clearly define the responsibilities of the organization, the local government units and other entities for carrying out the implementation actions;

C. define the organization's process for evaluating implementation of local plans and procedures to address a local government unit failing to implement its local plan or parts of its local plan;

D. include a procedure to establish an advisory committee, committees, or other means of public and technical participation acceptable to the board, for the purpose of making recommendations on a plan, plan amendment and plan implementation.

Subp. 2. **Capital improvement program.** Each plan must consider the feasibility of implementing structural solutions for attaining the goals defined under part 8410.0080 that cannot be resolved by non-structural, preventative actions. Each plan shall include a table for a capital improvement program that identifies structural and non-structural alternatives that would lessen capital expenditures and sets forth by year details of each contemplated capital improvement that includes the need, schedule, estimated cost, and funding source. The information may be combined with subpart 1, item A. In assigning of priorities, consideration must be given to federal, state, regional, local and private partners and regional and state plans.

Subp. 3 **Operation and Maintenance programs.** The plan must define who is responsible for inspection, operation and maintenance of stormwater infrastructure, public works, facilities, and natural and artificial watercourses and specify any new programs or revisions to existing programs needed to accomplish the goals defined under part 8410.0080.

Subp. 4 **Information and education program.** Each plan must provide for an information and education program in consideration of the goals defined under part 8410.0080. The program must, at a minimum, include the purpose, targeted audiences and actions. An annual communication must be distributed to residents of the organization in compliance with Minnesota Statutes, section 103B.227, subdivision 4.

Subp. 5. **Data collection programs.** Each plan must address whether established water quality, quantity and other resource monitoring programs implemented by the organization and others are capable of producing an accurate evaluation of the progress being made toward the goals defined under part 8410.0080. The programs shall, at a minimum, include the location of sampling, the frequency of sampling, the proposed parameters to be measured, and the requirement of periodic analysis of the data. Each organization must annually submit the collected data consistent with state compatibility guidelines to the appropriate state agency for entry into public data bases.

[changes in monitoring locations, frequency or parameters to be measured may not require plan amendment per .0100 subp. 2E]

Subp. 6. **Regulatory program.** Controls or performance standards shall be described in the plan. The plan must specifically describe how the organization's controls will be implemented in coordination with local official controls. The plan must clearly distinguish between the responsibilities of the organization and the affected local government units relative to controls established according to this subpart. The enforcement process for violations of controls of the organization must be defined. Controls must take effect within two years of plan adoption by the organization. The plan must include an assessment of existing controls within the organization's jurisdiction and address any deficiencies or

redundancies related to attaining the goals defined under part 8410.0080. Consistency and uniformity of controls are encouraged. If a plan notes the existence of certain land uses that could adversely affect the organization's ability to achieve the goals defined under part 8410.0080, the organization must provide written notification to that unit of government specifying the issue. Controls cannot be less stringent than state or federal regulations. The following items must be considered in developing a regulatory program:

A. Standards or controls that may be more restrictive than those required by the Wetland Conservation Act determined to be necessary to achieve the goals defined under part 8410.0080. Local wetland management controls must include maps or inventories of wetlands, existing comprehensive wetland protection and management plans, descriptions of existing local wetland banking programs, and procedures used in determining replacement of wetland functions and values for evaluating wetland replacement proposals.

B. Standards or controls for managing stormwater runoff must at a minimum address:

1. erosion and sediment transport to receiving waters;
2. nutrient loading and concentration; and
3. maximum permissible runoff rates and volumes.

C. Standards or controls to address flood impacts.

D. If the classification of any waterbody by the organization is inconsistent with Minnesota Rules Chapter 7050, the organization shall petition the Minnesota Pollution Control Agency to revise the classification.

Subp. 7. **Incentive programs.** Define for cost share or grant programs, if any, the general purpose, scope, time period, amount of funds, funding source, eligibility criteria for dispersing funds and a clear link to the measurable goals the program addresses, except that capital improvements must be defined to the degree needed to meet the definitions of "capital improvement" and "capital improvement program" as provided in part 8410.0020, subparts 3 and 4.

BWSR: Subp. 8. Impaired waters restoration program. Each plan may establish and implement an impaired waters restoration program. The program may involve monitoring, total maximum daily load development, and water quality restoration actions. The program shall be carried out consistent with the provisions of Minnesota Statutes Chapter 114D. Applicable portions of a watershed management plan or local water management plan developed or amended, adopted and approved according to the provisions of Minnesota Statutes, Chapter 103B and this chapter may be considered a total maximum daily load implementation plan as defined in Minnesota Statutes, section 114D.15, subdivision 11, if that purpose is stated as an objective when the plan is developed or amended, approved and adopted, and provides reasonable assurance that progress is being made on achieving load reductions.

BWSR: Subp. 9. **Environmental trading programs.** An organization may establish and implement an environmental trading program that allows for water-related impacts to be offset at different locations than the site of impact.

Subp. 8. **Local Plans.**

A. Each organization plan must specify to what degree the organization plan may be adopted by reference by a local government unit for all or part of its local plan. Upon request of a local government unit, an organization must provide a list to the local government unit and the plan review agencies of local plan revisions necessary for compliance with the organization plan.

B. Each plan must include a schedule for implementation of local plans. All local plans must be developed and in effect within two years of adoption of a board approved plan by the organization, or adoption of a board approved plan amendment by the organization if the organization determines a revised local plan is necessary due to the plan amendment.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0100 AMENDMENTS.

Subpart 1. **Amendment section.** Each plan shall contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishing the process by which the general and minor amendments, as defined in this part, may be made and who may initiate the amendments.

A. A plan must extend at least five years but no more than ten years from the date the board approves the plan.

B. An organization must evaluate the implementation actions in its plan with the annual activity report under part 8410.0110, subpart 2, item E at a minimum of every two years. If changes to the implementation actions are necessary as a result of the evaluation, then a plan amendment is required unless otherwise provided under subpart 2.

Subp. 2. **Changes not requiring an amendment.** These changes to plans must be distributed according to subpart 5 with a version showing deleted text as stricken and new text as underlined. Amendments to plans are not required for changes such as:

A. formatting of the plan;

B. revision of a procedure meant to streamline administration of the plan;

C. clarification of the intent of a policy;

D. inclusion of additional data not requiring interpretation; or

E. any other action that will not adversely affect a local government unit or diminish an organization's ability to achieve its plan's goals or implementation actions as determined by the board.

Subp. 3. **Amendment procedure.** All amendments to a plan must adhere to the review process provided in Minnesota Statutes, section 103B.231, subdivision 11, except when the proposed amendments are determined to be minor amendments according to the following provisions :

A. the board has either agreed that the amendments are minor or failed to act within 5 days of the end of the comment period specified in item B unless an extension is mutually agreed to with the organization;

B. the organization has sent copies of the amendments to the plan review authorities for review and comment allowing at least 30 days for receipt of comments and has identified the minor amendment procedure is being followed;

C. no county board has filed an objection to the amendments with the organization and the board within 30 days of when the amendments were sent;

D. the organization has held a public meeting to explain the amendments and published a legal notice of the meeting twice, at least seven days and 14 days before the date of the meeting; and

E. the amendments are not necessary to make the plan consistent with an approved and adopted county groundwater plan.

[Except for 'ten year' plan revisions and amendments required by county groundwater plans, almost all amendments not objected to by a county may follow the minor amendment process. The extended review time for BWSR under item A allows plan review agencies and cities to file objections to amendments with BWSR during the comment period which BWSR would then consider in making a decision on whether the minor amendment process could be followed.]

Subp. 4. **Form of amendments.** Draft and final amendments must be bound paper pages unless a receiving entity agrees in advance to receive an amendment in electronic format. Draft amendments must show deleted text as stricken and new text as underlined. Unless the entire document is reprinted, all final amendments adopted by the organization must be printed in the form of replacement pages for the plan with each page renumbered as appropriate and each page including the effective date of the amendment.

Subp. 5. **Distribution of amendments.** Each organization must maintain a distribution list of agencies and individuals who have received a copy of the plan. Each organization shall distribute copies of amendments to all on the distribution list and post the amendments on the organization's website within 30 days of adoption.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0110 ANNUAL REPORTING AND EVALUATION REQUIREMENTS.

Subpart 1. **Requirement for annual activity and audit reports.** Each organization shall annually:

A. Within 120 days of the end of the calendar year submit to the board an activity report for the previous calendar year.

B. Within 180 days of the end of the organization's fiscal year, submit to the board and the state auditor's office an audit report for the preceding fiscal year if the organization has expended or accrued funds during this time, except as provided in Minnesota Statutes, section 6.756. The audit report must be prepared by a certified public accountant or the state auditor in the format required by the Government Accounting Standards Board.

[Audits are required by MS 6.756 to be submitted within 180 days. MS 6.756 “exempts” (for 5 years) small budget organizations from having to complete an audit, although an annual financial statement must be done.]

C. The reports may be combined into a single document.

Subp. 2. **Content of annual activity report.** The annual activity report must include the following information:

A. a list of the organization's board members, citizen and technical advisors, board member vacancies at the end of the reporting year, names of designated officers, information on how members can be contacted, and the governmental organization that each board member represents for joint powers organizations and the county that each member is appointed by for watershed districts;

B. a list of organization's employees and consultants, including postal and electronic mailing addresses and telephone numbers, and identification of a contact person capable of answering questions about the organization;

C. an assessment of the previous year's annual work plan that indicates whether the stated activities were completed including the expenditures of each activity with respect to the approved budget unless included in the audit report;

D. a work plan and budget for the current year specifying which activities will be undertaken;

E. at a minimum of every two years an evaluation of progress on goals and the implementation actions, including the capital improvement program, to determine if amendments to the implementation actions are necessary according to part 8410.0100, subpart 1, item B using the procedures established in the goals and implementation sections of the plan under parts 8410.0080, subpart 1 and 8410.0090, subpart 1;

F. a summary of significant trends of monitoring data required by part 8410.0090, subpart 5;

- G. a copy of the annual communication required by part 8410.0090, subpart 4;
- H. the organization's activities related to the biennial solicitations for interest proposals for legal, professional, or technical consultant services under Minnesota Statutes, section 103B.227, subdivision 5;
- I. an evaluation of the status of local plan adoption and local implementation of activities required by the watershed management organization according to part 8410.0090, subpart 1, item B during the previous year;
- J. the status of any locally adopted ordinances or rules required by the organization including their enforcement; and
- K. a summary of the permits and variances issued or denied and violations under rule or ordinance requirements of the organization or local plan.

Subp. 3. **Watershed Management Organization websites.** Each organization shall have a website that, at a minimum, contains the location, time, agenda and minutes for organization meetings, contact information for the organization including a person capable of answering questions about the organization, the current watershed management plan, annual activity reports and audits for the past three years, and a list of the organization's board members including identification of designated officers. The website shall be kept current.

Subp. 4. **Procedure for state audit.** The board shall use the procedure described in items A to D to determine whether to order a state financial or performance audit of an organization.

- A. Before the board will consider ordering a state audit, a written complaint must be filed with the board's executive director requesting the board to order a state audit. The complaint must state as specifically as possible the grounds for requesting a state audit. Valid grounds for requesting a state audit include the mishandling or misuse of public funds or the documented failure to implement an approved plan.
- B. The executive director shall determine whether there is a basis for a complaint before reporting the complaint to the board. The executive director shall ensure that the affected organization and the plan review agencies are notified of the complaint and given an opportunity to respond to, or comment on, the allegations before determining whether there is a basis for the complaint.
- C. If the executive director determines there is a basis for the complaint, the affected organization shall be given an opportunity to appear before the board's dispute resolution committee established under Minnesota Statutes, section 103B.101, subdivision 10, and respond to the allegations in the complaint. The complainant shall also be given an opportunity to be heard.
- D. After providing an opportunity for the organization and the complainant to be heard, the board shall decide whether to order a state financial or performance audit of the organization. The cost of state financial and performance audits shall be paid for by the organization.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146*

8410.0120 DETERMINATIONS OF FAILURE TO IMPLEMENT.

Subpart 1. **Applicability.** This part applies when a plan is not being implemented for a watershed either because no watershed management organization exists, because the organization has not adopted an approved plan, or because the approved plan is not being carried out.

Subp. 2. **Petition.** The board may establish just cause for determining whether a plan is being properly implemented by review of a written petition. A petition may be made by a plan review agency, board staff, or a local government unit or 50 residents with land in the area that is subject to the petition. A petition must be made in writing to the executive director of the board and must summarize the issues at dispute and the efforts the party made to resolve the problem.

Subp. 3. Petition review process.

A. Within 30 days of receiving a written petition, board staff are required to send a copy to the plan review agencies and initiate a preliminary assessment including a review of relevant documents, review of comments from the plan review agencies, and discussions with involved parties. The results of the preliminary assessment shall be reviewed with the executive director and a report prepared if the executive director determines just cause exists. Just cause may be established if no annual report or audit has been submitted compliant with the requirements in part 8410.0110, or if a plan has not been amended according to part 8410.0100, subpart 1. Just cause may be established for other reasons according to subpart 4. The executive director of the board may combine multiple petitions involving the same organization and process as one decision. If the executive director determines just cause does not exist, the petitioner, the organization and the plan review agencies shall be provided written notice of the decision.

B. If just cause is established, board staff shall conduct further investigation and prepare a report. The report shall conclude whether a failure to implement exists, define the exact nature of the failure to implement, and recommend a course of action. The report shall be sent to the petitioner, the organization, the plan review agencies and affected local governments. Board staff shall provide written notification to all those to whom it sent the report of the time and location of a meeting to informally discuss the contents of the report.

C. The organization shall be allowed 60 days after the meeting in item B to hold a public hearing to develop a formal course of action and send a formal response by mail to the board and known aggrieved parties.

Subp. 4. **Criteria and standards for determinations.** In making a determination on the petition, the board must consider items including, but not limited to:

A. Whether the joint powers agreement and watershed management plan complies with Minnesota Statutes section 103B.211, subdivision 1 and this chapter.

B. Whether the organization is actively implementing a plan that has been approved by the board within the previous ten years. At a minimum, the organization is addressing its priority issues in the plan, is carrying out its implementation actions, has a current monitoring program to assess whether progress is being made on measurable goals, and has made progress on measurable goals for the priority issues.

C. Whether the organization is actively implementing the actions adopted in its plan that were derived from a county groundwater plan that has been approved by the board and adopted by the county.

D. Whether the organization has a contact person that is capable of answering questions about the organization and able to assist local governments and citizens in resolving their concerns.

E. Whether the organization submits annual activity reports and audits that comply with the requirements in part 8410.0110.

F. Whether an evaluation under Minnesota Statutes, section 103B.102 of an organization's performance, financial and activity information resulted in any corrective actions or areas of concern.

Subp. 5. Determinations.

A. On receipt of the information from subpart 3, items B and C, the board may:

1. do nothing further if the staff's recommendation is that the subject plan is being properly implemented, provided the board concurs;
2. advise board staff to conduct additional fact finding it considers necessary and report back to the board accordingly;
3. direct the organization to develop an amended plan within a reasonable time period;
4. direct staff or the dispute resolution committee to attempt to resolve the matter and to advise the board further; or
5. issue findings of fact and conclusions of its investigation advising the affected organizations, county, or counties of failure to implement the subject plan and advise the appropriate unit of government of its responsibility under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (b) or (c), within a prescribed period of time.

B. The board shall provide written notice of the determination to the petitioner, the organization, other local governments and the plan review agencies.

C. On issuance of its findings under item A, subitem 5, the board shall notify the appropriate counties to proceed as required by Minnesota Statutes, section 103B.231, subdivision 3, paragraph (b) or (c), as applicable. If a county fails to act after it is notified, the board shall notify state agencies that they may initiate their responsibilities under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (g).

Subp. 6. Appeal of determinations or decisions.

A. No appeal may be made to the board for the board's dispute resolution committee established under Minnesota Statutes, section 103B.101, subdivision 10, to hear and resolve disputes concerning plan implementation until after the procedures in subpart 5 have been completed or until after the executive director has made a decision that just cause does not exist under subpart 3, item A.

B. The determination of the board under subpart 5 or the decision of the executive director that just cause does not exist under subpart 3, item A is final if not appealed to the executive director of the board within 30 days after the date on which the notice of determination or decision is sent to those required to receive notice. A written appeal may be made by the petitioner or the organization. Within 30 days after receiving the appeal, the board, its dispute resolution committee, or its executive director must decide whether to hear the appeal. An appeal may be denied and not heard if the board, its dispute resolution committee, or its executive director decide the appeal is without sufficient merit, trivial, or brought solely for purposes of delay.

C. After an appeal is granted, the appeal must be decided by the board within 60 days after submittal of written briefs for the appeal and conclusion of a hearing by the dispute resolution committee. Parties to the appeal are the appellant and the organization. The board or its executive director may elect to combine multiple appeals involving the same organization and process as one decision. An appeal of a board decision may be taken to the state Court of Appeals and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.231; 103B.227*

History: *17 SR 146 Posted: October 13, 1997*

LOCAL PLANS

8410.0130 PLAN STRUCTURE.

Subpart 1. **Requirement.** Each local plan must, at a minimum, meet the requirements for local water management plans in Minnesota Statutes, section 103B.235 and this part, except as provided by the watershed management organization plan under part 8410.0090, subpart 9.

Subp. 2. **Local comprehensive plan.** Each local government unit must include the local plan as a chapter of its local comprehensive plan. All local comprehensive plans must be consistent with local plans adopted under this part.

Subp. 3. **Plan Contents.** Each local plan must, at a minimum, contain the following:

A. **Executive summary.** An executive summary that summarizes the highlights of the local plan.

B. **Water resource management related agreements.** Appropriate water resource management related agreements that have been entered into by the local community must be summarized, including joint powers agreements related to water management that the local government unit may be party to between itself and watershed management organizations, adjoining communities, or private parties.

C. **Land and water resources.** The existing and proposed physical environment and land use must be described. Drainage areas and the volumes, rates and paths of stormwater runoff must be defined. Data may be incorporated by reference as allowed under parts 8410.0070 and 8410.0090, subpart 8 or the local comprehensive plan.

D. **Assessment of problems.** An assessment of existing or potential water resource related problems must be summarized. The problem assessment must be completed for only those areas within the corporate limits of the local government unit and similar to the process under part 8410.0050, subpart 7.

E. **Implementation program.** A local implementation program through the year the plan extends must describe nonstructural, programmatic, and structural solutions to problems identified in item D. The program must not jeopardize achievement of the goals of an organization's plan. The implementation components must be prioritized consistent with the principles of part 8410.0050, subpart 1, item A. Local plans must prioritize the implementation components of an organization plan consistent with the organization priorities set forth under part 8410.0090 only for implementation components that must be facilitated by the local government unit. Local official controls must be enacted within six months of approval of the local plan by the organization. The program shall:

1. include areas and elevations for stormwater storage adequate to meet performance standards or official controls established in the organization plan;
2. define water quality protection methods adequate to meet performance standards or official controls in the organization plan and identify regulated areas;
3. clearly define the responsibilities of the local government unit from that of an organization for carrying out the implementation components;
4. describe official controls and any changes to official controls relative to requirements of the organization's plan;
5. include a table that briefly describes each component of the implementation program and clearly details the schedule, estimated cost and funding source for each component including annual budget totals; and
6. include a table for a capital improvement program that sets forth by year details of each contemplated capital improvement that includes the need, schedule, estimated cost and funding source.

Subp. 4. **Amendment procedures.** A section entitled "Amendments to Plan" must establish the process by which amendments may be made. The amendment procedure shall conform with the plan amendment procedures in the organization plans that affect the community.

Subp. 5. **Submittal and review.** After consideration and before adoption, the local plan or local plan amendments shall be submitted for review according to Minnesota Statutes, section 103B.235.

Subp. 6. **Adoption and Implementation.** Each local plan shall be adopted within two years, or within a lesser time period if specified in the organization plan, of the organization's adoption of the board approved organization plan or plan amendment that affects a local government unit. Each local plan must be adopted and implemented in accordance with the time requirements of Minnesota Statutes, section 103B.235, subdivision 4. Each local government unit must notify affected organizations and the Metropolitan Council within 30 days of adoption and implementation of the local plan or local plan amendment, including the adoption of necessary official controls.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.227; 103B.231; 103B.235*

History: *17 SR 146*