

## CHAPTER 8410

### BOARD OF WATER AND SOIL RESOURCES

### LOCAL WATER MANAGEMENT

METROPOLITAN AREA LOCAL WATER MANAGEMENT		8410.0090	ASSESSMENT OF PROBLEMS.
8410.0010	SCOPE.	8410.0100	IMPLEMENTATION PROGRAM.
8410.0020	DEFINITIONS.	8410.0110	IMPACT ON LOCAL GOVERNMENT.
8410.0030	CONTENT OF JOINT POWERS AGREEMENTS.	8410.0120	IMPLEMENTATION PRIORITIES.
8410.0040	REMOVAL OF ORGANIZATION REPRESENTATIVES.	8410.0130	IMPLEMENTATION COMPONENTS.
CONTENT OF WATERSHED MANAGEMENT ORGANIZATION PLANS		8410.0140	PLAN CONTENTS; AMENDMENTS.
8410.0050	EXECUTIVE SUMMARY.	8410.0150	ANNUAL REPORTING REQUIREMENTS.
8410.0060	LAND AND WATER RESOURCE INVENTORY.	CONTENT OF LOCAL PLANS	
8410.0070	IMPACT ON OTHER UNITS OF GOVERNMENT.	8410.0160	GENERAL STRUCTURE.
8410.0080	ESTABLISHMENT OF GOALS AND POLICIES.	8410.0170	STRUCTURE.
		8410.0180	DETERMINATIONS OF FAILURE TO IMPLEMENT.

#### METROPOLITAN AREA LOCAL WATER MANAGEMENT

##### 8410.0010 SCOPE.

Subpart 1. **Application.** Upon adoption, parts 8410.0010 to 8410.0180 apply to the general administration of metropolitan watershed management activities and to amendments to existing plans made after January 1, 1995. If no plan has been submitted to the board by August 3, 1992, any plan thereafter submitted must be in compliance with parts 8410.0010 to 8410.0180. A watershed management organization must amend its plan consistent with parts 8410.0010 to 8410.0180 and submit amendments to the board according to its amendment schedule and amendment procedures outlined in part 8410.0140, but not later than ten years from the date of initial plan approval.

Subp. 2. **Failure to implement plans.** When the board determines that a plan is not being properly implemented under an action initiated according to part 8410.0180, and there is reason to believe that an improved plan would lead to improved water management, the board may direct the responsible authorities to develop an amended plan within a reasonable time frame. In making this determination, the board must consider items including, but not limited to:

- A. when the plan was approved and adopted;
- B. the status of local plan development and adoption;
- C. the scope and anticipated costs to amend;
- D. the availability of funds; and
- E. the potential short- and long-term adverse impacts on the natural resources of the affected watershed.

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

**History:** *17 SR 146*

##### 8410.0020 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and in Minnesota Statutes, section 103B.205, apply to parts 8410.0010 to 8410.0180.

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 is not directed toward maintenance of an in-place system during its life expectancy.

Subp. 4. **Metropolitan Council or council.** "Metropolitan Council" or "council" means the Metropolitan Council as created by Minnesota Statutes, section 473.123.

Subp. 5. **Flooding problem.** "Flooding problem" means a flooding problem that has been identified as a problem by the watershed management organization or local unit of government.

Subp. 6. **Groundwater plan.** "Groundwater plan" means a county plan adopted under Minnesota Statutes, section 103B.255.

Subp. 7. **Local comprehensive plan.** "Local comprehensive plan" has the meaning given "comprehensive plan" in Minnesota Statutes, section 473.852, subdivision 5.

Subp. 8. **Local government unit or unit.** "Local government unit" or "unit" has the meaning given it in Minnesota Statutes, section 473.852, subdivision 7.

Subp. 9. **Metropolitan Water Management Act.** "Metropolitan water management act" has the meaning given it in Minnesota Statutes, sections 103B.201 to 103B.255.

Subp. 10. **Minor plan amendments.** "Minor plan amendments" means items such as recodification of the plan, revision of a procedure meant to streamline administration of the plan, clarification of the intent of a policy, the inclusion of additional data not requiring interpretation, or any other action that will not adversely affect a local unit of government or diminish a water management organization's ability to achieve its plan's goals or implementation program.

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. **Metropolitan Urban Service Area or area.** "Metropolitan Urban Service Area" or "area" has the meaning given on maps prepared by the Metropolitan Council. The latest version of the map identifying the area is incorporated by reference and is subject to periodic change. The latest version of the map identifying the area is available from the State Law Library through the Minitex interlibrary loan system. The area is the seven-county metropolitan area that the council is committed by policy to provide regional planning for sanitary sewer, highway, transit, park, and airport facilities.

Subp. 13. **Natural surface water storage and retention systems.** "Natural surface water storage and retention systems" means public waters and wetlands as defined in Minnesota Statutes, section 103G.005, subdivisions 15 and 19.

Subp. 14. **Official controls.** "Official controls" has the meaning given it in Minnesota Statutes, section 473.852.

Subp. 15. **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. 16. **Plan review authorities.** "Plan review authorities" means the Metropolitan Council, 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, 8, and 9.

Subp. 17. **Public waters.** "Public waters" means waters of the state identified as public waters under Minnesota Statutes, section 103G.005, subdivision 15.

Subp. 18. **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 city of New Prague.

Subp. 19. **Subwatershed unit.** "Subwatershed unit" means a hydrologic area less than the entire area under the jurisdiction of a watershed management organization.

## 8410.0020 LOCAL WATER MANAGEMENT

752

Subp. 20. **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. 21. **Watershed district.** "Watershed district" means a district established under Minnesota Statutes, chapter 103D.

Subp. 22. **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. 23. **Wetlands.** "Wetlands" means waters of the state identified as wetlands under Minnesota Statutes, section 103G.005, subdivision 19.

Subp. 24. **Wetland banking system.** "Wetland banking system" means an accounting system established by a unit of government for the purpose of tracking and managing net losses and gains to wetland values that occur as a result of development.

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

**History:** *17 SR 146*

## 8410.0030 CONTENT OF 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 must, at a minimum, contain the following items:

- A. a purpose statement consistent with Minnesota Statutes, section 103B.201;
- B. a complete legal description defining the boundary of the organization;
- C. a requirement to adopt rules of order and procedure;
- D. a process for establishing an annual budget and work plan;
- E. a formula for determining each member's share of the annual operating budget;
- F. a statement of how member appointees are to be compensated;
- G. a procedure providing for the establishment of citizen and technical advisory committees or other means of public participation;
- H. a section defining the powers and duties of the organization;
- I. a section establishing the duties and terms of the officers of the organization;
- J. a notification process on the location and time of meetings;
- K. a section defining the voting requirements for decision making and capital improvements consistent with Minnesota Statutes, section 103B.211, subdivision 1, paragraph (c);
- L. a section outlining meetings to be scheduled at least annually;
- M. the process and responsibilities of the organization and its members for filling vacancies consistent with Minnesota Statutes, section 103B.227, subdivisions 1 and 2;
- N. 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; and
- O. a section defining how the membership will be represented, with the total number of representatives to be at least three.

Subp. 2. **Updating.** Joint powers agreements must be updated if necessary to be in conformance with this chapter no later than July 27, 1993.

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.

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

**History:** *17 SR 146*

#### **8410.0040 REMOVAL OF ORGANIZATION REPRESENTATIVES.**

A manager of a watershed district or a member of a joint powers board may be removed from the position by the appointing authority before term expiration for violation of a code of ethics of the watershed management organization or appointing authority or for malfeasance, nonfeasance, or misfeasance, after being provided an opportunity for hearing before the appointing authority. Managers holding the position as an elected official who are not reelected, or are serving an indefinite term at the pleasure of the appointing authority, may be removed by the appointing authority at will. A decision of the appointing authority may be appealed to the Board of Water and Soil Resources.

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

**History:** *17 SR 146*

#### **CONTENT OF WATERSHED MANAGEMENT ORGANIZATION PLANS**

##### **8410.0050 EXECUTIVE SUMMARY.**

Each plan must have a section entitled "Executive Summary." The summary should outline the purpose of the watershed management organization; the membership of the organization's board of managers; the general boundaries of the organization; a brief history of the organization; a summary of the organization's goals, problems, and potential solutions; and the general content of required local plans.

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

**History:** *17 SR 146*

##### **8410.0060 LAND AND WATER RESOURCE INVENTORY.**

Subpart 1. **Required.** Each plan must contain an inventory of water resource and physical factors affecting the water resources based on existing records and publications. If data publications and maps are available at a convenient central location, they may be included by reference. The plan must include a brief summary of the data and must identify where the publication can be obtained. At a minimum, the information in subparts 2 to 11 must be included in the plan. Subparts 2 and 4, item E, may be in the local plan instead of the watershed management organization plan.

Subp. 2. **Precipitation.** Each plan must include precipitation data normally used in the seven-county metropolitan area for hydrologic and hydraulic design.

Subp. 3. **General geology and topographic data.** Each organization plan shall contain a summary describing the general topographic relief, geology, aquifers, and all known groundwater and surface water connections. The summary should reference available publications and maps where data may be available in greater detail. A map defining appropriate subwatershed units within the organization must be included.

Subp. 4. **Surface water resource data.** Necessary surface water data within the watershed includes:

A. a map of the public waters and public ditch systems established under Minnesota Statutes, chapter 103D or 103E, including the location of existing dams and control structures;

B. a copy of the National Wetlands Inventory Map produced by the United States Fish and Wildlife Service and, if considered useful by the organization, a copy of the Metropolitan Mosquito Control District Mosquito Control Wetland Inventory;

C. either an inventory of the functional values of the wetlands present, a provision for a phased project to create the inventory within a given time frame, or the adoption of a specific process to identify the functional values on a case-by-case basis for the review of individual project proposals, all of which must be consistent with Minnesota Statutes, section 103B.3355;

D. a table of the major hydrologic characteristics of public waters if provided by the Department of Natural Resources in a format that can be readily incorporated in a plan;

E. maps showing the areas served by each existing stormwater system that identify existing stormwater ponds and the location of all stormwater outfalls;

F. a table summarizing available information on the 100-year flood levels and peak discharges of existing and proposed stormwater ponds and flood profile information that corresponds to the peak discharges of channelized flow passing through the watershed. The plan shall determine the need for additional data and recommend a schedule for the data. A discussion must also be provided relative to the consistency of the flood profile information developed as part of the stormwater management plan to that of any information published in a Federal Emergency Management Agency flood insurance study;

G. a general discussion of, or a map showing areas of, known flooding problems not identified as flood-prone in a published flood insurance study;

H. a listing of the existing flood insurance studies and a location of where they can be viewed;

I. a summary of water quality data and any related information, if available, from the Pollution Control Agency, the Department of Natural Resources, the Department of Transportation, the Department of Health, the Metropolitan Council, the Metropolitan Waste Control Commission, the water management organization, the soil and water conservation district, and the affected counties and cities;

J. a map or list, if available, showing the location of known existing and abandoned surface water quality and quantity monitoring sites;

K. a list of municipalities with approved shoreland ordinances and projected completion dates for those without ordinances; and

L. a table listing the amounts and locations of all surface water appropriations as permitted by the Department of Natural Resources and provided to the organization.

Subp. 5. **Groundwater resource data.** Necessary groundwater data includes any data required to be included in the organization plan by a county groundwater plan. If a county groundwater plan is not anticipated to be completed, the organization plan must include groundwater data as necessary to allow groundwater issues to be addressed.

Subp. 6. **Soil data.** Each organization plan must include a general discussion of the types of soil present, their development limitations, their infiltration characteristics, and their tendency to erode. The discussion must include a list of references where more detailed data are available.

Subp. 7. **Land use and public utility services.** Necessary land use and public utility services information is limited to information that existed at the time the plan or plan amendment was developed, including:

A. a general map of existing land uses;

B. a general map showing anticipated land uses; and

C. reference to the location of the metropolitan urban service area.

Subp. 8. **Water-based recreation areas and land ownership.** Necessary information on water-based recreation areas and land ownership includes a map or a discussion of the location of all existing and proposed local, regional, state, and federal parks, preserves,

wildlife areas, recreation areas, canoe routes, and water accesses available for use by the public.

Subp. 9. **Fish and wildlife habitat.** Necessary information on fish and wildlife habitat includes:

A. a list and description of the Department of Natural Resources ecological and management classifications for lakes and streams, where available;

B. a list and description of the conclusions and recommendations of biological surveys or reconnaissance studies, where available; and

C. a description of state management plans for fish and wildlife areas, where available.

Subp. 10. **Unique features and scenic areas.** Necessary unique feature and scenic area information includes a map or a description or listing of unique features and scenic areas with relationships to water including state designated natural and scientific areas; areas containing county, state, and federal rare and endangered species; and other features such as waterfalls, springs, historic mills, and heritage elements identified by the Department of Natural Resources heritage program, to the extent it is available from the department.

Subp. 11. **Pollutant sources.** Necessary information on pollutant sources includes a map or list from appropriate agencies of:

A. known closed and open sanitary landfills, closed and operating open dumps, and hazardous waste sites identified under Minnesota Statutes, chapter 115A or 115B, and a summary of available water quality information relating to these sites; and

B. feedlots, abandoned wells as defined by the Department of Health, registered underground and aboveground storage tank sites, permitted wastewater discharges, and a summary of available water quality information relating to these sites.

If the information in this subpart is included in a county groundwater plan, the information can be excluded from the organization plan if suitable references are provided.

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

**History:** *17 SR 146*

#### **8410.0070 IMPACT ON OTHER UNITS OF GOVERNMENT.**

During the development of its plan or plan amendments, each watershed management organization shall request a summary of the relevant water management policies and goals of each local, regional, and state review authority identified in Minnesota Statutes, section 103B.231, subdivisions 7, 8, and 9. The organization shall take into consideration the goals and policies of the review authorities when drafting the organization's goals and policies. The organization's plan shall clearly outline and justify anticipated inconsistencies between its goals and policies and those of the authorities who responded if the requested information is furnished within 45 days of the organization's request.

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

**History:** *17 SR 146*

#### **8410.0080 ESTABLISHMENT OF GOALS AND POLICIES.**

Subpart 1. **Plan contents.** Each plan must contain specific goal statements and corresponding policies relating to the overall purposes specified in Minnesota Statutes, section 103B.201. The goals and policies of the watershed management organization shall attempt to avoid conflict with county, regional, or state goals and policies. The goals must be outlined in sufficient detail to provide direction regarding what the policies should accomplish, provide direction to the organization's board, and allow for the success or failure of the goals and policies to be quantified. The goals and policies should recognize the fundamental relationship between water quality and land use. Development of goals and policies must, at a minimum, address the issues in subparts 2 to 9.

## 8410.0080 LOCAL WATER MANAGEMENT

756

Subp. 2. **Water quantity.** Each plan must outline goals and policies describing how stormwater runoff will be managed. The maximum allowable peak runoff must be established for appropriate subwatersheds to the extent necessary to assure that the goals and policies of the organization will be met and address how runoff from developments creating more than one acre of new impervious surface will be managed with respect to Minnesota Statutes, section 103B.3365. The plan must describe the criteria used for defining "appropriate subwatersheds."

Subp. 3. **Water quality.** Each plan must outline specific water quality goals and policies for natural surface water storage and retention systems within the organization. Goals should be related to parameters or quantities that can be measured. The relationship of land use to water quality should be considered when developing goals and policies. The goals and policies should be developed to strive for compliance with applicable water quality standards and be suitable for the intended uses of natural surface water storage and retention systems.

Subp. 4. **Recreation and fish and wildlife.** Each plan must outline how water resource based recreational activities and wildlife interests will be protected or improved through the implementation of the plan. In consideration of these issues, the plan must determine whether there is a need to classify or prioritize individual water resources for management purposes.

Subp. 5. **Enhancement of public participation; information and education.** Each plan must outline goals and policies describing who will participate and when public participation will be encouraged. Goals and policies must at least address the creation and purposes of advisory committees and public information programs.

Subp. 6. **Public ditch systems.** If public ditch systems constructed under Minnesota Statutes, chapter 103D or 103E, are within the organization, the plan shall by policy define the organization's relationship to the ditch authority and recommend whether or not there are advantages to managing the ditch systems under the Metropolitan Water Management Act and determine whether ditch maintenance activities have the potential of adversely impacting any goal of the organization.

Subp. 7. **Groundwater.** If a county groundwater plan has not commenced at the time the plan or plan amendment is initiated, the organization shall assess the need and degree of involvement the organization has in groundwater management and establish appropriate goals and policies.

Subp. 8. **Wetlands.** Each plan must outline specific goals and policies regarding the management of wetlands within the organization and identify high priority areas for wetland preservation, restoration, and establishment. Wetland management goals and policies should address utilization, protection and preservation, and the enhancement or restoration of wetlands identified in the organization. Each plan must also evaluate the need to establish a wetland banking system.

Subp. 9. **Erosion.** Each plan must identify specific goals and policies that will control soil erosion consistent with the goals and policies outlined in this part.

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

**History:** *17 SR 146*

## 8410.0090 ASSESSMENT OF PROBLEMS.

Each plan must contain an assessment of existing and potential water resource related problems using a combination of analysis of land and water resource data collected under part 8410.0060 and through the identification of existing or potential problems by residents or local, regional, or state agencies. During the development of the assessment, the watershed management organization shall request a brief assessment of existing problems affecting the organization from the plan review authorities, the Department of Transportation, and the Department of Agriculture based on data, plans, and other documentation in

their possession. The organization should solicit comments from residents and local officials in the watershed district for information about problems that may be primarily local in nature. The organization's assessment shall include a discussion of the relationship of locally identified problems to problems identified by the plan review authorities, provided the information is received within 45 days of the organization's written request. The assessment of existing and potential problems as determined by the organization must, at a minimum, include the following topic areas:

- A. specific lakes and streams with water quality problems;
- B. flooding and stormwater rate control issues within and between communities;
- C. impacts of water quality and quantity management practices on recreation opportunities;
- D. impacts of stormwater discharges on water quality and fish and wildlife resources;
- E. impact of soil erosion on water quality and quantity;
- F. general impact of land use practices and, in particular, land development and wetland alteration on water quality and water quantity;
- G. the adequacy of existing regulatory controls to manage or mitigate adverse impacts on public waters and wetlands;
- H. the adequacy of programs to:
  - (1) limit soil erosion and water quality degradation;
  - (2) maintain the tangible and intrinsic values of natural storage and retention systems; and
  - (3) maintain water level control structures;
- I. the adequacy of capital improvement programs to correct problems relating to:
  - (1) water quality;
  - (2) water quantity management;
  - (3) fish and wildlife habitat and public waters and wetland management; and
  - (4) recreational opportunities; and
- J. future potential problems that are anticipated to occur generally within a 20-year period based on growth projections and planned urbanization identified in local and regional comprehensive plans. The assessments must include a discussion of the relationship between locally identified problems and the problems and goals identified in county, regional, state, and federal plans that are brought to the attention of the organization.

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

**History:** *17 SR 146*

#### **8410.0100 IMPLEMENTATION PROGRAM.**

Subpart 1. **Plan contents.** Each plan must describe an implementation program consisting of nonstructural, structural, and programmatic solutions to the problems, issues, and goals identified under parts 8410.0080 and 8410.0090. In developing its implementation program, the requirements in subparts 2 to 7 must be followed. Each plan should clearly define the responsibility of the watershed management organization and the local units of government in carrying out the implementation program and further define the organization's role when a local unit of government is considering a variance or fails to implement its water resource management responsibilities.

Subp. 2. **Regulatory controls.** In establishing required regulatory controls, items A to E must be considered.

A. Each plan must provide for the regulation of activities in wetlands and specify respective duties of the organization and local units of government. Each plan must



## 8410.0100 LOCAL WATER MANAGEMENT

758

describe local controls and procedures regarding carrying out the local government responsibilities under the Wetland Conservation Act of 1991, Laws 1991, chapter 354, and any rules adopted under it. Each plan must also define any other controls the organization has determined to be necessary to achieve its water management goals that may be more restrictive than those required by the Wetland Conservation Act of 1991, Laws 1991, chapter 354. The description must consider, where applicable, the following topics:

- (1) the relationship of the organization, state agencies, local soil and water conservation districts, and affected counties, cities, and towns with respect to authority, administration, and coordination;
- (2) designated repositories for required maps or inventories of wetlands;
- (3) procedures related to enforcement;
- (4) a description of local wetland banking programs and their relationship to a corresponding state program; and
- (5) the methods and procedures to be used in determining replacement of wetland values in mitigation proposals.

B. The organization shall specify controls or programs to reduce erosion and sedimentation to receiving waters. In rural areas, agricultural crop land erosion may be controlled by implementing zoning ordinances consistent with part 6120.3300, subpart 7, and may include other water resources outside of designated shoreland areas as considered appropriate by the organization. Organizations affected by specific state laws requiring adoption of uniform countywide erosion and sediment control standards or programs must comply with those laws. Any other organization must either adopt by reference an existing set of erosion and sediment control guidelines or best management practices published by a county, a soil and water conservation district, the board, or the Pollution Control Agency, or establish comparable erosion and sedimentation guidelines of its own for the purpose of administering erosion controls.

C. Each plan must specify controls that require all appropriate building permits, driveway permits, and grading permits to contain enforceable provisions to protect soil from erosion during and after construction, including sites for which approved erosion control plans are in place.

D. Each plan must identify member local units of government that have failed to adopt and administer a Department of Natural Resources approved shoreland and floodplain ordinance where mandated by state law. If the plan notes that flood damage has occurred outside of mapped floodplains or a potential for flooding exists adjacent to stormwater facilities, the plan shall require the local unit of government to determine if additional local controls are necessary to address the situation.

E. If a plan notes the existence of certain land uses that could adversely affect the organization's ability to achieve its water quality goals, and these uses cannot be properly managed or regulated with existing controls, the uses constitute a public nuisance according to Minnesota Statutes, section 609.74. In those cases, the plan must provide for the adoption of local controls to define and abate the nuisances. For the purpose of this chapter, public nuisances may include any action, failure to act, or land use practice that would impair water quality if allowed to continue.

Subp. 3. **Stormwater and drainage design performance standards.** Each plan must contain minimum standards and provide for appropriate controls for the design of new stormwater conveyance, ponding, and treatment systems consistent with the overall goals of the organization plan and consistent with Minnesota Statutes, section 103B.3365, subdivision 4. Included will be performance standards that provide for:

- A. the establishment of target in-lake nutrient concentrations and corresponding pollutant loadings for sediment and nutrients;

B. the establishment of maximum permissible runoff rates for selected design storms based on considerations such as existing and future flood levels and expected increases in runoff volume with respect to impacts on downstream channels and adjacent development;

C. the establishment of standards to reduce the impacts of flooding on natural resources and personal and real property;

D. the establishment of design criteria for stormwater outlet structures to address floatable pollutants and to provide for access for maintenance and repair;

E. pond design methodology for nutrient entrapment consistent with the subwatershed goals; and

F. compliance with pollutant loading for specific subwatersheds consistent with local, regional, and statewide plans in consideration of Pollution Control Agency water quality standards.

Subp. 4. **Information program.** Each plan must provide for the publishing of at least one written communication per year identifying the representatives on the organization's board, current advisory committee members, how to contact the organization, its role in local water management, the goals and policies of the organization, when public meetings are held, how the organization is financed, where the plan can be viewed, and other information relative to the implementation of the plan. The communication may be accomplished through the publication of a newsletter, publication of all or a portion of an annual report, an article or news release submitted to a local newspaper widely distributed in the member communities, an attachment to a sewer or water bill, or other similar media format that annually reaches the general population.

Subp. 5. **Data collection programs.**

A. Each plan must establish water quality and quantity monitoring programs that are capable of producing accurate data to the extent necessary to determine whether the water quality and quantity goals of the organization are being achieved. 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.

B. Each plan should encourage all units of government collecting water quality and quantity management data to annually submit the data consistent with state compatibility guidelines to the organization and other appropriate state agencies for entry into public access data bases.

Subp. 6. **Management programs.** Each organization plan must assess or require local plans to assess the need for periodic maintenance of public works, facilities, and natural conveyance systems and specify any new programs or revisions to existing programs needed to accomplish its goals and objectives. Each plan must further identify which units of government or private parties are responsible for maintenance. Each plan must, at a minimum, assess or require local plans to assess:

A. the need and frequency for sweeping of public and private streets and parking lots;

B. the need and frequency for inspecting stormwater outfalls, sumps, and ponds;

C. the adequacy of maintenance programs for stormwater facilities and water level control structures owned by both organization members and nonmembers;

D. the condition of public ditches constructed under Minnesota Statutes, chapter 103D or 103E, if the organization has jurisdiction over these systems;

E. the need to establish a water body management classification system to provide for water quality and quantity management based on a hierarchical basis;

F. the need to establish local spill containment clean-up plans; and

G. the need for other management programs as considered necessary.

**8410.0100 LOCAL WATER MANAGEMENT**

760

All proposed management programs establishing a classification system for the management of water bodies shall be consistent with chapter 7050. If organization classifications are inconsistent, the organization shall petition the Pollution Control Agency to revise the classifications in chapter 7050.

**Subp. 7. Potential structural solutions to problems.**

A. Each plan that documents existing water management problems that cannot be resolved by preventative actions shall investigate the feasibility of implementing structural solutions that would remediate or resolve each problem.

B. For each structural solution proposed, each plan shall provide a cost estimate and a recommendation as to how it should be funded.

C. Each potential structural solution identified under this part shall be assigned priorities. In assigning priorities, consideration shall be given to regional and state plans in conjunction with the organization's goals, policies, and problems identified in parts 8410.0080 and 8410.0090.

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

**History:** *17 SR 146*

**8410.0110 IMPACT ON LOCAL GOVERNMENT.**

Subpart 1. **Existing local controls.** Each plan shall review the impact of local controls and programs required by the plans according to part 8410.0100. This review shall include concerns expressed by counties, cities, and townships with respect to their administrative and financial capabilities to adopt and enforce the controls and programs in addition to a table that generally describes the status of local controls and programs of affected counties, cities, and townships with respect to that required by the plan.

Subp. 2. **Financial impact on local government.** Each plan shall contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under part 8410.0100. The analysis shall include, at a minimum, an estimate of the costs associated with the plan's implementation and anticipated sources of revenue.

Subp. 3. **Adoption by reference.** All or part of a watershed management organization plan may be adopted by reference by a local unit of government for all or part of its local plan to the degree specified in the approved organization plan.

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

**History:** *17 SR 146*

**8410.0120 IMPLEMENTATION PRIORITIES.**

Each plan must prioritize the plan implementation components to make the best use of available local funding; to prevent future water management problems from occurring to the maximum extent practical; and to ensure that regional, county, state, and federal grant funding is targeted properly.

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

**History:** *17 SR 146*

**8410.0130 IMPLEMENTATION COMPONENTS.**

Subpart 1. **Controls.** Each organization plan must provide for the adoption of necessary regulatory controls, stormwater design standards, education programs, data collection programs, and maintenance programs that the plan identifies under part 8410.0100.

Subp. 2. **Responsibilities.** Each organization plan must clearly distinguish the responsibilities of the watershed management organization versus the responsibilities of affected counties, cities, and townships with respect to each implementation program element established according to part 8410.0100.

Subp. 3. **Schedule.** Each organization plan must include a schedule for implementation by the organization, joint powers agreement members, and affected local units of

government. All plan controls and programs to be implemented by the organization must be in effect within one year of plan adoption. All local plan controls and programs must be developed and in effect within two years of adoption of the last organization plan in the local unit of government.

Subp. 4. **Capital improvement program.** Each organization plan shall include a capital improvement program that identifies specific capital improvements necessary to implement the water resource management goals and policies of the organization.

Subp. 5. **Enforcement.** Each organization plan must identify the procedure to be followed to enforce violations of the controls of the organization as well as those of the local unit of government.

Subp. 6. **Administration process.** Each organization plan must specify the administrative process and timelines for the submittal, review, and approval of local plans and variances by the organization.

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

**History:** *17 SR 146*

#### **8410.0140 PLAN CONTENTS; AMENDMENTS.**

Subpart 1. **Amendment section.** Each plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishing the process by which interim amendments may be made and who may initiate the amendments.

Subp. 2. **General 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 constitute minor amendments and:

A. the watershed management 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;

B. the organization has sent copies of the amendments to the affected local units of government, the Metropolitan Council, and the state review agencies for review and comment; and

C. the board has either agreed that the amendments are minor or failed to act within 45 days of receipt of the amendments.

Subp. 3. **Minor amendments to capital improvements.** Amendments to an approved plan's capital improvement program may be considered to be minor plan amendments if the following conditions are met:

A. the original plan set forth the capital improvements but not to the degree needed to meet the definition of "capital improvement program" as provided in Minnesota Statutes, section 103B.205, subdivision 3; and

B. the affected county or counties have approved the capital improvement in its revised, more detailed form.

Subp. 4. **Form of amendments.** Unless the entire document is reprinted, all amendments adopted by the organization must be printed in the form of replacement pages for the plan, each page of which must:

A. on draft amendments being considered, show deleted text as stricken and new text as underlined;

B. be renumbered as appropriate; and

C. include 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 and shall distribute

**8410.0140 LOCAL WATER MANAGEMENT**

762

copies of amendments within 30 days of adoption. All organizations should consider sending drafts of proposal amendments to all plan review authorities to seek their comments before establishing a hearing date or commencing the formal review process.

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

**History:** *17 SR 146*

**8410.0150 ANNUAL REPORTING REQUIREMENTS.**

Subpart 1. **Requirement for annual financial, activity, and audit reports.** Within 120 days of the end of the watershed management organization's fiscal year, each organization shall submit to the board a financial report, an activity report, and an audit report for the preceding fiscal year if it has expended or accrued funds during this time. These reports may be combined into a single document. The audit report for the preceding fiscal year must be prepared by a certified public accountant or the state auditor and forwarded to the state auditor's office within 120 days of the end of the fiscal year.

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

- A. the approved budget;
- B. a reporting of revenues;
- C. a reporting of expenditures; and
- D. a financial audit report or section that includes a balance sheet, a classification of revenues and expenditures, an analysis of changes in final balances, and any additional statements considered necessary for full financial disclosure.

Subp. 3. **Content of annual activity report.** The annual activity report must include the following information:

- A. a list of the organization's board members, advisory committee members, and board member vacancies at the end of the reporting year, including the names of designated officers and members and information on how members can be contacted, and indicating 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 employees and consultants, including mailing addresses and telephone numbers;
- C. an assessment of the previous year's annual work plan that indicates whether the stated goals and objectives were achieved and, if they were not achieved, indicates why they could not be achieved;
- D. a projected work plan for the next year indicating the desired goals and objectives;
- E. a summary of the permits or variances issued or denied under ordinances or rules required by the organization or local plan and any enforcement actions initiated by either the organization or its local units of government;
- F. a summary of water quality monitoring data collected by the organization or its local units of government;
- G. an evaluation of the status of local plan adoption and implementation based on a review of the local unit of governments' activities by the organization during the past year;
- H. a copy of the written communication required by part 8410.0100, subpart 3;
- I. 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;
- J. an assessment of changes in fund balances, including a description of the costs of each program element with respect to the overall annual budget; and

K. the status of any locally adopted wetland banking program.

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 is notified of the complaint and given an opportunity to respond to 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 complaint shall be reported to the board. The affected organization shall be given an opportunity to appear before the board at the time the complaint is reported to it and respond to the allegations in the complaint. The complainant shall also be given an opportunity to appear.

D. After having the complaint reported to it, and after providing an opportunity for the organization and the complainant to be heard by it, the board shall decide whether to order a state financial or performance audit of the organization.

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

**History:** *17 SR 146*

## CONTENT OF LOCAL PLANS

### 8410.0160 GENERAL STRUCTURE.

Each local plan must, at a minimum, meet the requirements for local plans in Minnesota Statutes, section 103B.235, except as provided by the watershed management organization plan under part 8410.0110, subpart 3. Each local plan must include sections containing a table of contents; purpose; water resource related agreements; executive summary; land and water resource inventory; establishment of goals and policies; relation of goals and policies to local, regional, state, and federal plans, goals, and programs; assessment of problems; corrective actions; financial considerations; implementation priorities; amendment procedures; implementation program; and an appendix. Each community should consider including its local plan as a chapter of its local comprehensive plan. Each local plan shall be adopted within two years of the board's approval of the last organization plan that affects local units of government.

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

**History:** *17 SR 146*

### 8410.0170 STRUCTURE.

Subpart 1. **Purpose.** Each local plan must have a section entitled "Purpose" outlining the purposes of the water management programs required by Minnesota Statutes, sections 103B.205 to 103B.255.

Subp. 2. **Water resource management related agreements.** Appropriate water resource management related agreements that have been entered into by the local community must be outlined, including joint powers agreements related to water management that the local community may be party to between itself and watershed management organizations, adjoining communities, or private parties. Available information concerning these agreements in general conformance with the content of joint powers agreements for organizations as outlined in part 8410.0030 must be included.

## 8410.0170 LOCAL WATER MANAGEMENT

764

Subp. 3. **Executive summary.** Each plan shall have a section entitled "Executive Summary" that generally summarizes the content of the local plan in a manner similar to that required for organization plans under part 8410.0050.

Subp. 4. **Land and water resource inventory.** Each local plan must contain a composite land and water resource inventory containing all relevant data from organization plans affecting it consistent with the data required by part 8410.0060.

Subp. 5. **Establishment of policies and goals.** Each local plan must state specific goals and corresponding policies related to the purpose of these plans, be consistent with the policies and goals of the organization plans within the city or township, and address the relation of the local plan to the regional, state, and federal goals and programs outlined in part 8410.0070.

Subp. 6. **Assessment of problems.** Each plan must contain a summary assessment of existing or potential water resource related problems, including those identified in organization plans that affect the community. The problem assessment must be completed for only those areas within the corporate limits of the community and meet the same content requirements as those outlined for organization plans under part 8410.0080, subparts 1 and 2.

Subp. 7. **Corrective actions.** Each local plan shall describe nonstructural, programmatic, and structural solutions to the problems identified in subpart 6. The mandatory actions for organization plans outlined in part 8410.0100, subparts 1 to 6, shall be considered except that actions must be limited to those that can be implemented at a local level. All corrective actions must be consistent with the organization plans having jurisdiction in the municipality or township.

Subp. 8. **Financial considerations.** Each local plan must contain an analysis of the financial impact of implementation of the proposed regulatory controls and programs identified under subpart 7. The analysis must include, at a minimum, the following items:

A. the estimated cost of adoption and enforcement of local controls and standards for the local municipality;

B. the estimated annual cost of implementation of other specified programs to each local municipality;

C. a discussion of local ability to fund adoption of and enforcement of local controls and standards, implementation of other specified programs, and capital improvements, including:

- (1) levy limit constraints;
- (2) effect on other city funding needs;
- (3) establishment of watershed management taxing districts;
- (4) creation of stormwater utilities; and
- (5) monetary impact against homes or farmsteads in affected community;

D. the impact on the local municipality of local implementation of each capital improvement project component if ad valorem financing is used; and

E. a summary of grant funding that would likely be available to fund water management projects and programs.

Subp. 9. **Implementation priorities.** Each local plan must prioritize implementation components to make the best use of available local funding and prevent future water management problems from occurring to the maximum practical extent. Local plans must prioritize organization plan implementation components in line with organization priorities as outlined under part 8410.0120 only for implementation components that must be facilitated by the local municipality or township.

Subp. 10. **Implementation program.** Each local plan must outline required implementation components that apply at a local level. These components shall be consistent

with the required plan components outlined for organization plans under part 8410.0130. Official local controls must be enacted within six months of adoption of the local plan.

Subp. 11. **Amendment procedures.** Each local plan must contain a section entitled "Amendments to Plan" containing the year the plan extends to and establishes the process by which amendments may be made. The amendment procedure shall conform with the plan amendment procedure outlined in the organization plans that affect the community. Local plan amendments must be forwarded to each organization affected by the local plan amendment for review and approval before adoption.

Subp. 12. **Submittal and review.** After consideration and before adoption, the local plan shall be submitted to all affected organizations for review according to Minnesota Statutes, section 103B.235. Each local unit of government must also notify affected organizations within 30 days of adoption and implementation of the plan, including the adoption of necessary official controls.

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

**History:** *17 SR 146*

#### **8410.0180 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. **Establishing cause.** Before the board's involvement in determinations of whether a plan is being properly implemented, the board shall first establish just cause for the determination by review of a written complaint from an aggrieved party or through conclusions arrived at by board staff under the review of an organization's annual report. A complaint or appeal made by an aggrieved party under Minnesota Statutes, section 103B.231, subdivision 13, 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. Board staff responsibilities.**

A. Board staff may investigate issues relating to alleged failure to implement plans primarily by response from written complaint from an aggrieved party or by review of the organization's annual report. Within 30 days of receiving a written complaint, board staff are required to initiate a preliminary investigation of the facts as they appear based on personal observation, review of all relevant documents, and discussions with involved parties. The results of this preliminary investigation shall be reviewed with the executive director, and the board's legal counsel if appropriate, before preparation of a report. The report shall ascertain whether a failure to implement exists, define the exact nature of the failure to implement, and recommend a course of action.

B. On completion of a report regarding a complaint or review of an annual report, the staff shall send a copy of its report by certified mail to the organization members of record to set a time and place for a meeting agreeable to all parties to informally discuss the contents of the report if a conflict exists. The complainant and any other aggrieved or affected party shall also be sent a copy of the report by certified mail and shall be invited to attend any meeting held to discuss the report.

C. The affected organization shall be allowed 30 days to hold a public meeting to develop a formal course of action if the joint powers agreement requires that process. Any formal response shall be sent by certified mail to the board and any aggrieved or affected party within 15 days of the meeting.

D. The affected organization and any aggrieved or affected party may not appeal to the board's dispute resolution committee established under Minnesota Statutes, section 103B.101, subdivision 10, to hear and resolve disputes over plan implementation until after the meeting has been held according to item B.



E. Based on information discovered at the meeting held according to item B, or receipt of the formal response received from the organization according to item C, board staff shall report to the board at a regular meeting as to the status of the dispute. If the board needs to take further action to resolve the dispute, board staff shall recommend the appropriate course of action, consulting with the board's legal counsel as appropriate.

**Subp. 4. Board responsibilities.**

A. On receipt of the board staff's report and recommendations, the board is required to do any or all of the following:

(1) nothing further if the staff's investigation finds 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) order the dispute resolution committee to convene to attempt to negotiate the matter and to advise the board further; or

(4) issue findings of fact and conclusions of its investigation advising the affected organizations, county, or counties of the documented failure to implement the subject plan and advise the appropriate unit of government of its responsibility to implement the plan under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (b), within a prescribed period of time.

B. On issuance of its findings under subpart 3, item A, 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 prerogatives under Minnesota Statutes, section 103B.231, subdivision 3, paragraph (g).

C. The board's dispute resolution committee has the following duties and responsibilities with respect to disputes relating to failure to implement a plan:

(1) convene and hear appeals from both aggrieved parties and organizations not satisfied with the findings and recommendations of the board's staff report presented at the meeting required by subpart 2; and

(2) convene at the pleasure of the board as prescribed by item A to attempt to negotiate and settle disputes over determinations relating to implementation of plans and to further advise the board.

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

**History:** *17 SR 146*