

**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*

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