

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. **Petition.** The board shall 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, 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 authorities and the organization and initiate a preliminary assessment including a review of relevant documents, review of comments from the plan review authorities and the organization, 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 8410.0150, or if a plan has not been amended according to part 8410.0140, subpart 1, item C. Just cause may be established for other reasons according to subpart 3a. 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 authorities 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, and the plan review authorities. Board staff shall provide written notification to all those to whom it sent the report of the time and location of a meeting to discuss the contents of the report.

C. The organization is 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. 3a. **Criteria and standards for determinations.** In making a determination on the petition, the board must consider:

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

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 goals, and has made progress on 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 8410.0150;

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;

G. whether the organization sufficiently implemented the actions in its previous plan and made progress on attaining the goals in its previous plan;

H. whether the organization maintains a website that complies with part 8410.0150, subpart 3a; and

I. any other factors pertinent to the petition.

Subp. 4. Determinations.

A. On receipt of the information under 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;

(4) set a time period for the submission of an amended plan that reflects the complexity of the amendments;

(5) direct staff or the dispute resolution committee to attempt to resolve the matter and to advise the board further; or

(6) 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 to complete 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, and the plan review authorities.

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. 5. 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 4 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 4 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 the close of the hearing record by the dispute resolution committee. Parties to the appeal are the appellant and the organization. The board or its executive director may elect to join multiple appeals involving the same organization and actions into one decision. A party aggrieved by the board's final decision may seek judicial review as provided in Minnesota Statutes, sections 14.63 to 14.69.

Subp. 6. Determination necessary for watershed district termination. A determination of failure to implement under subpart 4, item A, subitem (5), is necessary before the board may terminate a watershed district under Minnesota Statutes, section 103B.221.

Statutory Authority: *MS s 103B.101; 103B.211; 103B.227; 103B.231; 103B.235; 103B.239*

History: *17 SR 146; 40 SR 6*

Published Electronically: *September 10, 2018*