



Overview of MN Drainage Law Changes Since 1991

MPDM Outreach – Engineers Mtg.
Kandi Entertainment Center, Willmar, MN
April 27, 2017

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Pertinent Facts about Chapter 103E Revisions Since 1991

- Chapter 103E Drainage law – currently 106 Sections
- 33 sections revised since 1991, including addition of a few
- The stakeholder Drainage Work Group (DWG) has recommended revisions of 26 sections and adding 1 section, in 6 sets of consensus recommendations since 2007
- Other entities that proposed revisions: Legislators on behalf of constituents or on their own, Revisor of Statutes, BWSR



Drainage Work Group Membership

Meeting
attendance
range 25 - 45

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|-----------------------------|---|
| Drainage Authorities | AMC – Association of Minnesota Counties (and some county staff) |
| | MAWD – Minnesota Association of Watershed Districts |
| Farm Groups | MFB – Minnesota Farm Bureau |
| | MFU – Minnesota Farmers Union |
| | Other Ag and Producer Groups (MAWRC, MCGA, MSGA, etc.) |
| Environmental Groups | MCEA – Minnesota Center for Environmental Advocacy |
| | FWLA – Fish and Wildlife Legislative Alliance |
| | MCF – Minnesota Conservation Federation |
| Other Associations | MASWCD – MN Assn. of Soil and Water Conservation Districts |
| | MVA – Minnesota Viewers Association |
| | MACATFO – MN Assn. of Co. Auditors Treasurers Financial Officers |
| | MADI – Minnesota Association of Drainage Inspectors |
| | RRWMB – Red River Watershed Management Board |
| | MAT – Minnesota Association of Townships |
| | MRCC – Minnesota Rural Counties Caucus |
| State Agencies + | BWSR, DNR, MDA, MPCA + UMN |
| Legislature | House and Senate staff |



Section 103.005 Definitions

- 2002 – : “Municipality” revised, “Water Management Authority” added in relation to new Sec. 103E.812 **Transfer of all or Part of Drainage System.**
- 2013 – DWG: “Director” of DNR Division of Waters revised to “Division of Ecological and Water Resources”
- 2013 – DWG: “Secretary” of a watershed district drainage authority added



Section 103.011 Drainage Authority Powers.

- 2000 – BWSR recommended addition of Subd. 5. **Use of External Sources of Funding.**
 - Public program / drainage system partnerships – often best for wetland restorations, WQ improvements, flood control involving Chapter 103E drainage systems
 - Authorizes drainage authorities to accept external funding and to use drainage system funds in the watershed of the drainage system for these purposes



Section 103.015 Considerations Before Drainage Work is Done.

- 2014 – DWG recommended significant revisions
- Goal was to better enable multipurpose water management
 - Must **consider** environmental, land use, and multipurpose water management criteria for “drainage projects”
 - More clearly include “adequacy of the outlet” in criteria
 - Must **investigate** external funding sources for multipurpose when planning “drainage projects” and petitioned repairs – prior to order based on prelim. engr’s report, or repair report



Section 103.021 Ditches Must be Planted with Perennial Vegetation.

- 2007 – DWG recommended significant revisions to:
 - Clarify from where to measure buffer strips
 - Allow perennial vegetation other than grass
 - Enable permissive authority for incremental buffer strips and/or side inlet controls (added Subd. 6. **Incremental Implementation of Vegetated Ditch Buffer Strips and Side Inlet Controls.**)



Section 103.065 Drainage Inspectors.

- 2010 – DWG recommended revisions, with goals to:
 - Clarify applicability for watershed district drainage authorities
 - Require all drainage authorities to have a drainage inspector
- 2014 – Rep. Hansen championed addition of a provision prohibiting county commissioners serving as a drainage inspector



Section 103.067 Ditch Buffer Strip Annual Reporting.

- 2007 – Rep. Hansen championed addition
 - DWG members helped craft language for calendar year reporting requirements
 - BWSR requests and compiles annual reporting from drainage authorities (on BWSR website, Drainage page)



Section 103.081 Crimes Related to Drainage Systems; Penalties.

- 2005 –
 - Subd. 2a. **Planting Trees Over Public Tile.** – prohibition of planting trees over Chapter 103E public tile without permission from the drainage authority
 - Subd. 2b. **Planting Trees Over Private Tile.** – prohibition of planting trees over private tile without permission from persons benefited by the drain tile



Section 103.101 Drainage Proceeding and Construction Records.

- 2013 – DWG recommended adding:
 - Subd. 4a. **Reestablishing Records.** – requires investigation and report by a MN P.E. using existing records and evidence to define alignment, cross section, profile, structure characteristics, and right-of-way
 - Subd. 5a. **Transferring Records.** – requires transfer of records to a watershed district associated with transfer of a drainage system, and enables authenticated copies of records



Sec. 103.227 Impounding, Rerouting and Diverting Drainage System Waters.

- 2010 – DWG recommended significant revisions to:
 - Enable rerouting part of a Chapter 103E drainage system
 - Enable \$ partnerships of public programs & drainage systems
 - Clarify engineer’s investigation and report
 - Clarify flowage easement and permit requirements
- 2013 – DWG: add in Subd. 1. **Petition.** “or to incorporate wetland or water quality enhancing elements as authorized by section 103E.011, subdivision 5.”



Section 103.315 Assessment of Drainage Benefits and Damages.

- 2007 – DWG recommendation:
 - Add Subd. 8. **Extent of Damages.**, para. (a), clause (5): to address costs to restore a practice existing under a federal or state conservation program damaged by a drainage project
- 2016 – DWG recommendation:
 - Add Subd. 8. **Extent of Damages.**, para. (b): requires viewers and drainage authorities to consider the land use prior to buffer strip or alternative practice installation under the Buffer Law in determining the fair market value of the property and associated damages



Section 103.701 Repairs.

- 1993 – Definition of “repair” revised to include:
 - Incidental straightening of a tile system
 - Replacement of tile with next larger size, if original size not readily available
- 1996 – Added wetland “preservation” in then Subd. 6. **Wetland Restoration and Mitigation.**
- 2003 – Added Subd. 5a. **Compensation to Landowners Instead of Bridge or Culvert Repair.**



Section 103.701 Repairs.

- 2007 – DWG recommendation:
 - Add Subd. 7. **Restoration; Disturbance or Destruction by Repair.** – applies to federal or state program cons. practices
- 2013 – DWG recommendations:
 - Revise “repair” definition: “condition” → “hydraulic capacity”
 - Revise Subd. 6. **Wetland Restoration and Replacement; ...** to include: “incorporation of measures to reduce channel erosion and otherwise protect or improve water quality”



Section 103.705 Repair Procedure.

- 2007 – DWG recommendation:
 - Add in Subd. 1. **Inspection.**: “Open drainage ditches shall be inspected at a minimum of every five years when no violation of section 103E.021 is found and annually when a violation of section 103E.021 is found, until one year after the violation is corrected.”
- 2008 – References to revised Uniform Municipal Contracting Law were updated



Section 103.715 Petitioned Repairs.

- 2007 – DWG recommendation:
 - Add Subd. 7. **Restoration; Disturbance or Destruction by Repair.** – applies to federal or state program conservation practices
- 2013 – DWG recommendation:
 - Along with 103E.701 revised “repair” definition, enable a 2-stage ditch via petitioned repair
- Discussion about where a 2-stage ditch is most applicable



Section 103.805 Removing Property from Drainage System.

- 2010 – DWG recommended:
 - Separate “removal of property” from “partial abandonment of a drainage system”
 - Clarify the process for removal of property
 - Adopt the test: “that the waters from the petitioner’s property have been diverted from the drainage system, or that the property cannot significantly or regularly use the drainage system”



Section 103.806 Partial Abandonment of Drainage System.

- 2010 – DWG recommended:
 - Separate from Section 103E.805 **Removing Property from Drainage System.**
 - Clarify the process for partial abandonment
 - Maintain the test: “does not serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is not of a substantial public benefit and utility”



Section 103.812 Transfer of All or Part of Drainage System

- 2002 –
 - Petitioned transfer of a Chapter 103E drainage system to a water management authority, including a municipality
 - Typically most applicable where urban development has expanded over part of a Chapter 103E drainage system
 - Includes substantial due process to protect drainage outlet for benefited landowners of the drainage system
 - Requires transferee engineering report about the drainage system characteristics and may require a technical panel



Questions?