

Ditch Buffer Strip History and Statutory Language

In 2007, [Section 103E.067 Ditch Buffer Strip; Annual Reporting](#) was added to M.S. Chapter 103E Drainage law. This provision requires county, joint county, and watershed district drainage authorities to annually submit a report to the Board of Water and Soil Resources (BWSR) providing information about public drainage ditch buffer strip establishment, inspection, and enforcement that was conducted during the previous calendar year.

103E.067 DITCH BUFFER STRIP; ANNUAL REPORTING.

The drainage authority shall annually submit a report to the Board of Water and Soil Resources for the calendar year including:

- (1) the number and types of actions for which viewers were appointed;
- (2) the number of miles of buffer strips established according to section [103E.021](#);
- (3) the number of drainage system inspections conducted; and
- (4) the number of violations of section [103E.021](#) identified and enforcement actions taken.

History:

[2007 c 57 art 1 s 111](#)

The M.S. Chapter 103E ditch buffer strip requirement is triggered by the appointment of viewers to determine benefits and damages. This includes a total of eight types of M.S. Chapter 103E proceedings. Every “drainage project”, petitioned repair, and other proceeding that appoints viewers requires the reporting of ditch buffer strip miles once the buffer strips are established. Drainage system inspections, including ditch buffer strips, are required by the [Section 103E.705 Repair Procedure](#). M.S. Chapter 103E also includes several buffer strip enforcement requirements.

Reporting Process, Information, and Annual Summaries

Each year, typically in mid-December, BWSR notifies M.S. Chapter 103E drainage authorities of the Ditch Buffer Strip Annual Reporting requirement in Section 103E.067 and provides a form to submit the requested information for the applicable calendar year. This notification is sent via email using a Drainage Authority “Point-of-Contact” list. The following ditch buffer strip reporting information is requested.

1. For the applicable calendar year, the number of actions for which viewers were appointed for each of the following types of M.S. Chapter 103E proceedings, and the number of miles of ditch buffer strip established in accordance with Section 103E.021 for each of the proceedings:
 - a) [Section 103E.021 Planting Ditches with Perennial Vegetation](#), Subd. 6
Incremental establishment; vegetated buffer strips and side inlet controls
 - b) [Section 103E.212 New Drainage System Projects](#)

- c) [Section 103E.215](#) **Improving Drainage Systems**
 - d) [Section 103E.221](#) **Improving Outlets**
 - e) [Section 103E.225](#) **Laterals**
 - f) [Section 103E.351](#) **Redetermining Benefits and Damages**
 - g) [Section 103E.715](#) **Repair by Petition**, Subd. 6. Repair by resloping ditches, incorporating multistage ditch cross section, leveling spoil banks, installing erosion control, or removing trees
 - h) [Section 103E.741](#) **Property not Assessed Benefits; Hearing**
- 2. The number of drainage system inspections conducted.
 - 3. The number of violations of Section 103E.021 identified.
 - 4. For each of the violations, the enforcement action(s) taken. ([Sec. 103E.705](#), Subd. 1. and 2.; [Sec. 103E.021](#), Subd. 4. and 5.; [Sec. 103E.728](#), Subd. 2.)

Annual reporting summaries are posted on the BWSR Drainage Page under the “[Chapter 103E Ditch Buffer Reporting](#)” tab.

M.S. Chapter 103F.48 Impact and Applicability of M.S. Chapter 103E.067 Specific Data related to vegetative strip compliance.

As noted above, the intention of the M.S. Chapter 103E.067 reporting was initially tied to collection of data to better understand the pace of progress for M.S. Chapter 103E related buffer implementation and establishment which was triggered by the various provisions of drainage law.

With the current implementation of the [M.S. Chapter 103F.48](#) Riparian Protections and Water Quality Practices requirements, there is ongoing comprehensive reporting related to the implementation of buffers by the SWCDs following BWSR’s adopted “[reporting and progress tracking](#)” procedure. Enforcement monitoring is completed through statutorily required copying of BWSR on notifications of non-compliance, corrective action notices and APOs. The statutory requirements in M.S. Chapter 103F.48, Subd. 3 (2) is consistent with the requirements found under M.S. Chapter 103E: permanent strips of perennial vegetation shall be 16-1/2 feet in width measured outward from the top edge of the constructed channel resulting from the proceeding, or to the crown of the leveled spoil bank, whichever is the greater. The vegetative strip requirement is similarly between 103F.48 & 103E.067 with the exception of the allowance for use of alternative practice under 103F.48.

Because of the regulatory aspect associated with 103F.48 and the coordination between SWCDs and enforcement entities as well as reporting to BWSR the level of detail associated with reporting M.S. Chapter 103F.48 calls for greater resolution and spatial detail than the data which is captured under the current requirements in M.S. Chapter 103E.067.

While BWSR's 'reporting and progress tracking' procedure captures compliance data with greater spatial detail than 103E.067, 103F.48 compliance data is currently shared with the general public at the aggregate county level (via this [map](#)).” BWSR will be reviewing how the

reporting of compliance data is shared publicly under 103F.48 in the coming year due to changes to 103F.48 Subd 1 (j) during the 2024 legislative session.

M.S. Chapter 103E.067 Specific Data related to drainage actions which require appointment of viewers.

The number and type of actions for which viewers were appointed, and the number of drainage inspections conducted, would be lost without a replacement under the proposed changes to 103E.067, and that while BWSR is notified when an enforcement entity receives notification of non-compliance and reports are generated to communicate this information publicly the individual details reported are not currently accessible to the public.

While some trends may be identifiable under the M.S. Chapter 103E.067 reporting, the data doesn't gather sufficient detail at a scale beyond the Drainage Authority which is reporting. As a result, the data is rarely if ever utilized and provides minimal value. Even when eventual vegetative strip enforcement would come into play under either 103E or 103F.48 communication directly with the Drainage authority would be needed to confirm specific locations where there is a 103E system acquired strip to identify the appropriate enforcement entity and methods and this data is not called for or gathered through the tracking of actions which appoint viewers called for under 103E.067.

Drainage Work Group Review and Recommendation

The DWG has assessed the value of the current statutory reporting requirements in M.S. Chapter 103E.067, as well as the potential redundancy with M.S. Chapter 103F.48 reporting requirements as it relates to violations and enforcement of the 16.5' vegetative strips.

The DWG has concluded that the requirements established in M.S. Chapter 103E.067 in 2007 have fulfilled the objectives set at the time enacted, that they provide less substantive data, and that they are no longer needed due to the duplicative nature with reporting now utilized under M.S. Chapter 103F.48. If data of substance on these topics was desired it could be made available on a case-by-case basis from a Drainage Authority considering the public nature of the information.

Therefore, the DWG proposes repealing the requirements found in M.S. Chapter 103E.067.

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