

CHAPTER 8400
BOARD OF WATER AND SOIL RESOURCES
COST-SHARE PROGRAM

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8400.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.0100 to 8400.2900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 40, apply.

Subp. 1a. **Adequately protected.** "Adequately protected" means that soil erosion and other factors that influence the sustained productive use of the resource base are within acceptable limits, which are achieved through the use of soil and

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water conservation practices. With respect to soil erosion, the loss may not exceed "T."

Subp. 2. Agricultural Stabilization and Conservation Service. "Agricultural Stabilization and Conservation Service" means the United States Agricultural Stabilization and Conservation Service, an agency of the United States Department of Agriculture.

Subp. 3. Annual plan. "Annual plan" means a plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 4. Approved practice. "Approved practice" means a soil and water conservation practice which qualifies for state cost-sharing and which has been approved by the state board.

Subp. 5. Area conservationist. "Area conservationist" means the area conservationist of the Soil Conservation Service.

Subp. 6. Assigned Soil Conservation Service personnel. "Assigned Soil Conservation Service personnel" means the district conservationist or Soil Conservation Service personnel designated by the area conservationist to provide need and performance certification to the program.

Subp. 7. [Repealed, 9 SR 2439]

Subp. 7a. Class I-IV soil. "Class I-IV soil" means soil generally suitable for field crop production according to United States Department of Agriculture Handbook No. 210, "Land Capability Classification" (Washington, D.C., September, 1961). That publication is not subject to frequent change, is available at the Saint Paul Public Library, and is incorporated by reference. Soil in Class I has few limitations that restrict their use while Class IV soil has very severe limitations that require very careful management.

Subp. 8. Comprehensive plan. "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minnesota Statutes, section 40.07, subdivision 9 and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 8a. Descriptive maps. "Descriptive maps" means computer-generated maps prepared by the land management information center of the State Planning Agency and provided to districts depicting high priority wind and water erosion and sedimentation areas. These maps are a tool for the district to identify high priority problem areas. These maps can and should be supplemented by the district as needed to more accurately reflect high priority erosion and sedimentation problems.

Subp. 9. District. "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 10. District board. "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 11. District conservationist. "District conservationist" means the district conservationist of the Soil Conservation Service.

Subp. 12. District cooperator. "District cooperator" means a land occupier who has requested the assistance of a district in controlling conservation problems. The request must be formalized by the signing of a district cooperator's agreement provided by the state board and approved by the district board.

Subp. 13. District technician. "District technician" means a district employee or county employee assigned to the district who possesses expertise in the design and application of soil and water conservation practices.

Subp. 14. Enduring practice. "Enduring practice" means a soil and water conservation practice which is designed for an effective life of ten years or more.

Subp. 14a. Feedlot model. "Feedlot model" means the analytical model contained in "An Evaluation System To Rate Feedlot Pollution Potential," publication no. ARM-NC-17, of the Agricultural Research Service of the United States Department of Agriculture (Peoria, Illinois, April 1982), designed for programmable hand-held calculators and used to determine the pollution potential rating of an animal feedlot. That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.

Subp. 15. Field Office Technical Guide. "Field Office Technical Guide" means the document providing standards and specifications for technical requirements of soil and water conservation practices as provided by the Soil Conservation Service and adopted by the district board.

Subp. 16. Group spokesperson. "Group spokesperson" means an individual designated by the several individuals involved in a group project, who may speak for the entire group in negotiations with a district for cost-share assistance.

Subp. 16a. High priority erosion problems. "High priority erosion problems" means areas where erosion from wind or water is occurring on Class I-IV soils equal to or in excess of 2 x T tons per acre per year or any area within 300 feet of a water course or within 1,000 feet of a water basin or wetland eroding by water in excess of T tons per acre per year. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Erosion problems occurring on nonshoreland areas in excess of T but less than 2 x T tons per acre per year are classified as secondary priority.

Subp. 16b. High priority water quality problems. "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources designated protected waters or to a sinkhole or ground water so as to impair their quality or usefulness, including high priority feedlots and sedimentation problems.

"High priority feedlots" means feedlots where the pollution potential rating from the feedlot model is greater than or equal to one and which are discharging pollutants to Department of Natural Resources designated protected waters or to a sinkhole or shallow soils overlying fractured or cavernous bedrock or within 100 feet of a water well. Feedlots not meeting these criteria are not eligible for cost-sharing assistance except as provided in part 8400.2600, subpart 3.

"High priority sedimentation problems" means areas within 300 feet of a water course or 1,000 feet of a water basin or wetland where the water erosion rate exceeds three tons per acre per year or areas where the districts can show that sediment delivery occurs from a watershed or direct conveyance structure such as a storm sewer or paved outlet channel discharging to these waters. The water basin, wetland, or water course must be classified by the Department of Natural Resources as a protected water. Sedimentation problems not meeting these criteria are not eligible for cost-sharing assistance.

Subp. 17. [Repealed, 9 SR 2439]

Subp. 18. Land occupier. "Land occupier" means a person, firm, or corporation, including the governments of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the state, who possess lands lying within a district organized under Minnesota Statutes, chapter 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

Subp. 19. Nonproduction practice. "Nonproduction practice" means a soil and water conservation practice which is installed or applied to control soil erosion or sedimentation or to protect or improve water quality. Practices installed or applied primarily to bring land into production or to increase the short-term productivity are not eligible for cost-sharing.

Subp. 20. **Program plan.** "Program plan" means a statewide plan developed by the state board, in consultation with the districts and appropriate agencies, for control of the soil and water conservation problems in the state.

Subp. 20a. **Protected water.** "Protected water" means those water basins, water courses, and wetlands, as defined in Minnesota Statutes, section 105.37, on the inventory of public waters and wetlands under Minnesota Statutes, section 105.391, subdivision 1, and identified on a protected waters and inventory map available in a county auditor's office.

Subp. 20b. **Registered professional engineer.** "Registered professional engineer" means a person who practices professional engineering within the meaning of Minnesota Statutes, sections 326.02 to 326.15, and who performs technical professional services such as, but not limited to, the planning, designing, or inspecting of the construction of erosion, sediment control, or water quality protection or improvement measures. A registered professional engineer may be designated by a district board and may use criteria in a recognized technical procedure to design, install, and certify practices which qualify for state cost-sharing.

Subp. 20c. **Shallow soils overlying fractured or cavernous bedrock.** "Shallow soils overlying fractured or cavernous bedrock" means areas where the soil depth or texture in conjunction with the condition of the bedrock will not provide treatment of agricultural waste sufficient to protect groundwater quality. Determination of these areas is made on an individual project basis by assigned Soil Conservation Service personnel or a registered professional engineer. Actual determination may be done by the district technician.

Subp. 20d. **Sinkhole.** "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone; drainage is through joints and fractures in underlying bedrock.

Subp. 21. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to the land for the purpose of controlling soil erosion, sediment, agricultural waste, or other water pollutants.

Subp. 22. **Soil Conservation Service.** "Soil Conservation Service" means the United States Soil Conservation Service, an agency of the United States Department of Agriculture.

Subp. 22a. **Special project.** "Special project" means a conservation project including but not limited to a demonstration project, accelerated watershed or water quality project, long-term conservation agreement, planning technique, or nonstructural erosion or sediment control or water quality protection or improvement measure. Special projects may address nonshoreland secondary priority erosion problems and are submitted to the state board according to "Guidelines for Special Projects" published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 23. **State board.** "State board" means the state Board of Water and Soil Resources created in Minnesota Statutes, section 40.03.

Subp. 24. [Repealed, 9 SR 2439]

Subp. 25. **T.** "T" means soil loss tolerance which is the maximum level of soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely. In Minnesota, "T" ranges from one to five tons per acre per year depending on the particular soil characteristics. "T" values for Minnesota soils are provided in the Field Office Technical Guide.

Subp. 26. **2 x T.** "2 x T" means soil erosion at the rate of two times T.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439; L 1987 c 358 s 34*

8400.0200 AUTHORITY.

Minnesota Statutes, chapter 40, authorizes the state Board of Water and Soil Resources, in cooperation with the soil and water conservation districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. Parts 8400.0100 to 8400.2900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts, and standards and guidelines which the district boards shall use in allocating funds to land occupiers.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439; L 1987 c 358 s 34*

STATE BOARD FUNCTIONS**8400.0300 ESTABLISHING APPROVED PRACTICES.**

The state board, in consultation with the districts, shall maintain a list of practices which are eligible for cost-share funds and a schedule of maximum rates. The list is contained in parts 8400.2000 to 8400.2700 and the schedule in parts 8400.2800 and 8400.2900. Changes to the list and schedule must be made pursuant to Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.0400 CRITERIA FOR APPROVED PRACTICES.

Practices approved by the state board must meet the criteria in items A to C.

A. Their primary purpose must be the control of soil erosion or sedimentation, or protection or improvement of water quality.

B. They must be enduring in nature. All practices cost-shared under this program must be designed for a minimum effective life of ten years.

C. They must be nonproduction practices.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.0500 MAXIMUM COST-SHARE RATES.

The maximum cost-share rates established by the state board represent the maximum percent of the total cost of a practice that may be funded by state cost-share funds. Where state and federal funds are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.

Statutory Authority: *MS s 40.036 subd 3*

8400.0600 ALLOCATION OF FUNDS.

Subpart 1. **Comprehensive plan.** Before the state board can allocate cost-share funds to a district it must first approve the district's comprehensive plan, including its most recent amendment and the annual work plan which includes the application for needed cost-share funds. The plans must be in a format required by the state board.

Subp. 2. [Repealed, 9 SR 2439]

Subp. 3. **Review criteria.** The state board shall review all district applications for cost-share funds with respect to the following criteria:

A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;

B. priorities for the control of soil erosion or water quality problems as established in the program plan of the state board;

C. historical success of the district in applying soil and water conservation practices;

- D. availability of cost-share funds from other sources; and
- E. readiness of the district to effectively use the funds.

The state board shall review all district applications for special project funds with respect to criteria established in the most recent version of the Guidelines for Special Projects published by the state board. That publication is subject to frequent change, is available in the State Law Library, and is incorporated by reference.

Subp. 4. Grants. Following review and approval of the annual and comprehensive plans, the state board shall allocate to districts in the form of grants at least 70 percent of the cost-sharing funds available statewide for conservation practices to address high priority erosion or water quality problems. The remaining cost-share funds may be allocated by the board to districts for technical and administrative assistance or special projects. Technical and administrative assistance grants may be used for controlling secondary priority nonshoreland erosion problems.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.0700 MONITORING.

For the purpose of monitoring the progress of the program and use of funds, the state board shall receive from each district an annual report of the year's accomplishments by a date deemed reasonable by the state board. The state board may require additional special reports deemed necessary by the state board to monitor the cost-sharing program. The reports must be on forms provided by the state board.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

DISTRICT FUNCTIONS

8400.0800 APPLICATION FOR FUNDS BY DISTRICTS.

Each district shall apply for funds as indicated in part 8400.0600.

Statutory Authority: *MS s 40.036 subd 3*

8400.0900 ADMINISTRATION OF FUNDS.

Following receipt of grant funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 40 and all other applicable laws. The district board may make all decisions concerning use of these funds in accordance with parts 8400.0100 to 8400.2900.

As a condition to receiving grant funds from the state board, the district shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota Statutes, chapter 40 by monitoring all cost-share contracts made with land occupiers.

Prior to considering any applications from land occupiers for cost-share assistance, the district board shall establish the cost-share rates for practices to be installed under the program, which may not exceed the maximum rates established by the state board. This decision shall be based on the following factors:

- A. the extent of high priority erosion or water quality problems in the district as outlined in the district comprehensive and annual plans;
- B. advice of technical experts familiar with the district;
- C. cost-share rates currently in effect under the agricultural conservation program administered by the United States Agricultural Stabilization and Conservation Service and other assistance programs;
- D. district priorities as established in the districts' comprehensive and annual plans; and

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E. cost-share funds available.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the state board and available from the district office. Each application must be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the current fiscal year. After initial priority screening by the district board, assigned Soil Conservation Service personnel or a registered professional engineer are responsible for making a determination of need and cost estimate. Actual determination of need and cost estimate may be done by the district technician. Additional information on the desired practice which may be required by the district board in its consideration of the application shall be included.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1100 GROUP PROJECT.

A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project if all of the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on a division of payments and designate a group spokesperson. The spokesperson must be identified on the group cooperator agreement and shall file all forms with the district and negotiate all project details with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1200 LAND IN MORE THAN ONE DISTRICT.

If a project involves land in more than one district, application must be made to the district containing the most land benefited by the practice.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW.

Criteria for district board review:

- A. The applicant must be a district cooperator.
- B. The practice needed to solve the problem must be on the list of approved practices.
- C. The primary purpose of the requested practice must be the control of soil erosion or sedimentation, or the protection or improvement of water quality. In cases where the primary purpose is questionable, the district board shall make a determination of the acceptability of the application. Additionally, the district board shall make determination of the need for supplemental practices to protect any practice installed under this program, such as fencing of water impoundment structures. If the district board determines that supplemental practices are necessary, it shall authorize cost-sharing for their installation.
- D. The requested practice must be consistent with district plans and priorities.

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E. The practice must be maintained by the land occupier, who is responsible for operation and maintenance of practices applied under this program.

F. Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements. Cost-share funds may not be used for repair of practices installed solely with private or federal cost-sharing funds.

G. The practice must comply with the technical requirements of the Field Office Technical Guide. For practices not included in the Field Office Technical Guide, other recognized technical procedures may be used to design, install, and certify practices.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1400 DISTRICT APPROVAL.

Subpart 1. **General.** After completion of a priority determination and cost estimate, the district board shall either approve or deny the application. If it is approved, the district board shall instruct the chairman or acting chairman to sign the application. Once it is signed, the application becomes the contract between the district and land occupier and serves as the authorization for work to proceed on the practice. Practices begun prior to district approval are ineligible for financial assistance. If it is denied, the district board shall notify the land occupier in writing within 30 days after board action of the reason for denial of the application. Changes in any provisions of the contract are subject to review and approval by the district board.

Subp. 2. **High priority problems.** In order to ensure compliance with part 8400.0600, subpart 4, the district board shall approve only those applications that involve the high priority problems for which they received funds.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1405 STARTING AND COMPLETION DEADLINES.

Subpart 1. **Time limit; cancellation.** Projects not started within 18 months after district board approval must be canceled unless an amendment to the project has been approved by the district board. Projects not completed within two calendar years after initial approval must be canceled.

Subp. 2. **Partial payment.** In cases where weather or other unanticipated circumstances beyond the control of the land occupier, force postponement of certification of completion until the following construction season, the state board or its authorized representative may authorize a district board to issue a partial payment for the work that has been completed. The following conditions must be met before the state board or its authorized representative will consider authorizing a partial payment:

- A. The anticipated completion date will be in compliance with subpart 1.
- B. The completed work meets the requirements of part 8400.1300, item G.
- C. The state board's authorized representative must review the work and concur in the payment decision.

Subp. 3. **Payment conditions.** If the state board or its authorized representative authorizes a partial payment under subpart 2, the following conditions apply:

- A. Payment percentages must comply with part 8400.2800.
- B. The balance of the project must be paid by the district board upon the satisfactory completion of the total project.
- C. All expenses incurred in correcting damage caused to the project by virtue of its incompleteness must be borne by the land occupier.

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D. Land occupiers receiving partial payments must complete the project within a time deemed reasonable by the district board.

E. Land occupiers not completing partially paid projects are violating part 8400.1700 and shall be directed to return the amount of financial assistance received.

F. Partial payment authorizations shall not be construed as precedent setting. Every request will be considered by the state board or its authorized representative on its own merits.

Subp. 4. **Denial.** If the state board or its authorized representative denies a request for partial payment under subpart 2, the district board shall be notified within 30 days of the reasons for denial of the request.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1500 DISTRICT RECORDS.

The district shall maintain a current ledger of all cost-share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the district has contracted, the practices involved, the status of construction, and a total of funds encumbered.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1600 PAYMENTS.

Subpart 1. **Construction of practice.** Construction of practices must be monitored by the district board to ensure compliance with part 8400.1300, item G. Upon completion, assigned Soil Conservation Service personnel or a registered professional engineer shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of part 8400.1300, item G. No certification shall be made until all specifications have been satisfied. Exceptions must be in accordance with part 8400.1405, subpart 2. Upon certification of completion, the land occupier shall contact the district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. **In kind services.** In kind services provided by the land occupier such as, but not limited to, earth work, seedbed preparation, and seeding may be credited toward the land occupier's share of the total cost of the practice. The district board shall determine whether charges for in kind services are practical and reasonable.

Subp. 3. **Actual cost differing from estimated cost.** In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share contract has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the estimated cost, or postpone the starting or completion date of the practice. These changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share contract covering the changes. Amendments may not be authorized for providing final cost-sharing percentages in excess of the originally approved percentage or additional money for projects that were knowingly underfunded at the time of approval. Amendments may not be authorized after final approval of payment has been made on the original contract. Where the actual cost is less than the estimated cost, the district shall only share the approved percentage of the actual cost of the practice. The district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the district determines that all claims are practical and reasonable, it shall authorize

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issuance of a check for the district share of the practice. If the district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The district board shall then authorize the issuance of a check for the district share of the justified claims.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1700 MAINTENANCE.

The land occupier is responsible for operation and maintenance of practices applied under this program to ensure that their conservation objective is met and the effective life of ten or more years is achieved. Should the land occupier fail to maintain the practices during their effective life, the land occupier is liable for the amount of financial assistance received for their installation. The district board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1800 APPEALS.

If a land occupier feels he has been treated unfairly, he may request that the district board review its decision. Should the land occupier and the district board reach an impasse, the land occupier may petition in writing for a hearing before the state board. If it grants the hearing, which shall be informal, the state board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The referee, if one is used, shall report his findings and recommendation to the state board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the district board.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.1900 REPORTS TO STATE BOARD.

Each district shall submit to the state board the reports identified in part 8400.0700.

Statutory Authority: *MS s 40.036 subd 3*

8400.1950 VARIANCES.

If a district board feels that a particular requirement of parts 8400.0100 to 8400.2900 prevents an erosion or sedimentation control or water quality project from being installed, a request for a variance may be filed with the director of the state board. The request must be in writing and contain:

A. the name and address of the district board making the request and the signature of the district chairperson;

B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;

C. a statement of alternatives for dealing with the installation of the affected project if the variance is not granted; and

D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Variance requests must be submitted to the director at least 30 days prior to the state board meeting at which the variance is requested to be heard. Within 45 days after the meeting, the state board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance will not be granted if it is in conflict with any statute. The state board may grant a variance upon such conditions as it may prescribe.

If a variance has been granted by the state board, the district board holding the variance may file with the state board at any time a written request for modification or amendment of the variance. The request for modification or amendment, and the state board's consideration of the request, shall comply with requirements of this part.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

APPROVED PRACTICES

8400.2000 APPROVED PRACTICE: EROSION CONTROL STRUCTURES.

Subpart 1. Definition. "Erosion control structure" means a structure such as, but not limited to, floodwater retarding or multipurpose dams designed to provide temporary storage of floodwater, control the release rate of water providing downstream channel stability, or impound water.

Subp. 2. Purpose. The purpose of an erosion control structure is to control soil erosion or to protect or improve water quality. An erosion control structure may provide multiple benefits including, but not limited to, water supply for livestock, recreation, flood control, channel stability, wildlife habitat, and fire prevention.

Subp. 3. Applicability. Erosion control structures may be used on any lands where they are necessary for the control of soil erosion or water quality protection or improvement.

Subp. 4. Policies. Cost-sharing is authorized:

A. only for the construction of erosion control structures that provide for reduction of soil erosion or water quality protection or improvement;

B. for the installation of livestock watering facilities in conjunction with erosion control structures only if the facilities are necessary for the proper management and protection of the structure as determined by the district board;

C. for permanent fencing of an erosion control structure as determined by the district board;

D. for tree and shrub plantings adjacent to the structure and seeding necessary to stabilize an erosion control structure and adjacent critical areas, including, whenever possible, the use of those species that provide wildlife habitat and visual enhancement;

E. for erosion control structures which provide multiple benefits if the primary benefit is soil erosion control or water quality protection or improvement;

F. for temporary materials and seedings necessary to properly stabilize an erosion control structure during construction; and

G. for erosion control dams and ponds if a minimum of 50 percent of the contributing drainage area above the proposed project is adequately protected.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2100 APPROVED PRACTICE: STRIPCROPPING.

Subpart 1. **Definition.** "Stripcropping" means the development and application of a cropping system for a farming unit which provides for planting row crops with the contour where practicable and incorporates alternate strips of row crops, close grown crops, sod crops, or fallow.

Subp. 2. **Purpose.** The purpose of stripcropping is to establish a system of farming with contour, field, or wind stripcropping to control soil erosion or protect or improve water quality. Stripcropping may provide additional benefits to wildlife.

Subp. 3. **Applicability.** Stripcropping may be used on any lands where it is necessary for the control of soil erosion or water quality protection or improvement.

Subp. 4. **Policies.** Cost-sharing is authorized for equipment and labor costs involved in the marking of individual strip lines. Equipment and labor costs must not exceed equivalent total costs as listed in "Custom Rate Estimates for Minnesota," published annually by the University of Minnesota Agricultural Extension Service, and available in county agricultural extension offices. That publication is adopted by reference.

A project is not eligible for state cost-share assistance if federal cost-share funds are used on the same project.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2200 APPROVED PRACTICE: TERRACES.

Subpart 1. **Definition.** "Terrace" means an earth embankment, or a combination ridge and channel constructed across the slope at the required spacing.

Subp. 2. **Purpose.** Terraces are constructed to:

- A. reduce erosion;
- B. reduce sediment content in runoff water;
- C. intercept and conduct surface runoff at a nonerosive velocity to a stable outlet;
- D. prevent gully development;
- E. reduce flooding; or
- F. protect or improve water quality.

Terraces may provide additional benefits by creating wildlife habitat and retaining runoff for moisture conservation.

Subp. 3. **Applicability.** Terraces may be used on any lands where they are needed for the control of soil erosion or water quality protection or improvement.

Subp. 4. **Policies.** Cost-sharing is authorized:

- A. for construction necessary to properly establish terraces, including earthwork, material, and seedings if necessary;
- B. for temporary materials and seedings necessary to properly stabilize terraces during construction; and
- C. for tile systems necessary for the establishment and operation of the terraces, including the outlet which shall be limited to 300 feet below the last terrace in a system.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2300 APPROVED PRACTICE: DIVERSIONS.

Subpart 1. **Definition.** "Diversion" means a channel with a supporting ridge on the lower side constructed across the slope.

Subp. 2. **Purpose.** The purpose of a diversion is to divert water away from erosive areas or areas that pose a threat to water quality to areas where it can be used or disposed of safely. Diversions may provide additional benefit to wildlife.

Subp. 3. **Applicability.** A diversion may be used where:

A. runoff from higher lying areas is eroding cropland, pastureland, or farmsteads, or is needed to support conservation practices such as terraces or stripcropping in the control of erosion or sedimentation;

B. surface and shallow subsurface flow is damaging sloping upland or contaminating ground or surface water; or

C. it is required as a part of a pollution abatement system, or to control erosion or sedimentation on urban or developing areas and construction sites.

Subp. 4. **Policies.** Cost-sharing is authorized:

A. for tile systems necessary for the establishment and operation of diversions;

B. for construction necessary to properly establish diversions including earthwork, materials, and seedings;

C. for temporary materials and seedings necessary to properly stabilize diversions during construction; and

D. for permanent fencing of diversions as determined by the district board.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2400 APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

Subpart 1. **Definition.** "Stormwater control system" means a practice or system of practices such as, but not limited to, grassed waterways, water and sediment control basins, and grade stabilization structures installed to convey storm runoff to a constructed or natural outlet in a nonerosive manner. This practice does not apply when the primary purpose is drainage to expand or improve crop production or making the cropping system more convenient.

Subp. 2. **Purpose.** The purpose of a stormwater control system is to provide a means of regulating or removing runoff to control erosion or protect or improve water quality. Additional benefit may be provided through creation of wildlife habitat.

Subp. 3. **Applicability.** A stormwater control system may be used on all lands by using vegetative or structural measures for control of erosion or protection or improvement of water quality.

Subp. 4. **Policies.** Cost-sharing is authorized:

A. For the construction of practices required in a complete stormwater control system. These practices include, but are not limited to a lined waterway or outlet, detention ponds, vegetative filter strips, permanent sod cover, and permanent vegetation including trees, shrubs, and grasses. At least 80 percent of the contributing drainage area above grassed waterways on land owned or controlled by the applicant, must be adequately protected.

B. For tile systems necessary for the establishment and operation of stormwater control systems, including the outlet, which is limited to 300 feet below the end of the waterway.

C. For temporary materials and seedings necessary to properly stabilize a stormwater control system during construction.

D. For permanent fencing of stormwater control systems as determined by the district board.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2500 APPROVED PRACTICE: FIELD WINDBREAKS.

Subpart 1. Definitions. "Field windbreak" means a strip or belt of trees, shrubs, or grass barriers established within or adjacent to a field.

Subp. 2. Purpose. The primary purpose of a field windbreak is to reduce wind erosion. Additional benefits may be the protection of crops, livestock, and wildlife, increased moisture conservation by controlling snow deposition, and beautification and enhancement of the landscape.

Subp. 3. Applicability. Field windbreaks may be used in or around open fields which need protection against wind erosion. Additional benefits may be realized from the creation of wildlife habitat.

Subp. 4. Policies. Cost-sharing is authorized for site preparation, planting materials, planting, chemicals for weed control, and other applicable costs necessary to establish a field windbreak. The land occupier is responsible for controlling competitive vegetation for two years following planting and must bear the cost of control.

Cost-sharing is prohibited for plantings installed primarily for farm beautification, protection of buildings or livestock, energy conservation, or other uses where erosion control is not the primary purpose.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2600 APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.

Subpart 1. Definition. "Animal waste control system" means a planned agricultural waste management system to contain and manage liquid and solid wastes including runoff from concentrated animal waste (feedlot) areas with ultimate disposal in a manner which does not degrade soil or water resources. This practice includes systems for safe disposal of livestock wastes through use of soil and plants.

Subp. 2. Purpose. Agricultural waste management systems are used to manage wastes in rural areas in a manner which prevents or minimizes degradation of soil and water resources and protects public health and safety. These systems are planned to preclude discharge of pollutants to surface or ground water and, to the fullest practicable extent, recycle wastes through soil and plants.

Subp. 3. Applicability. Animal waste control systems may be used with any high priority feedlot or where the land occupier was cited by the Minnesota Pollution Control Agency or other situations where that agency determines there is a potential feedlot pollution hazard.

Subp. 4. Policies. Cost-sharing is authorized for:

A. All structures and permanent shrubs, trees, or grasses necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage ponds, and waterways. A complete system, controlling discharge of runoff from animal confinement areas to waters of the state, is required.

B. Tile systems necessary for the establishment and operation of an animal waste control system.

C. Temporary materials and seedings necessary to properly stabilize an animal waste control system during construction.

D. Permanent fencing of an animal waste control system as determined by the district board.

Cost-sharing is prohibited on any costs normally incurred in the management of an animal confinement area. This includes buildings, yards, permanent or portable pumps, tank wagons, loaders, stackers, and similar items.

Holding tanks, collection basins, waste conveying pipe, and other animal

waste facilities are eligible for cost-sharing if the district board determines that they are necessary to protect water quality and if the entire system needed to control pollution is installed.

A holding tank which will become an integral part of a building is eligible for cost-sharing if there is no other feasible alternative available for controlling pollution. The district board, with technical review completed by technicians available to it, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2700 APPROVED PRACTICE: CRITICAL AREA STABILIZATION.

Subpart 1. Definition. "Critical area stabilization" means planting permanent vegetation such as trees, shrubs, vines, grasses, or legumes or placing rock cover on highly erodible or severely eroded sites or in areas where vegetation is needed to protect or improve water quality.

Subp. 2. Purpose. The purpose of critical area stabilization is to provide permanent vegetative or rock cover to stabilize the soil, to control erosion or to protect or improve water quality. Additional benefit may be gained by improving wildlife habitat and enhancing natural beauty.

Subp. 3. Applicability. Critical area stabilization may be used on sediment-producing, highly erodible, or severely eroded areas or in areas where vegetation is needed to protect or improve water quality, such as, but not limited to, abandoned mine spoil, construction sites, and denuded or gullied areas where vegetation is difficult to establish.

Subp. 4. Policies. Cost-sharing for stabilizing streambank, lakeshore, and roadside areas must be addressed with the approved practice in part 8400.2705.

Cost-sharing is authorized for:

- A. earthwork, materials, seed, and seedings and other associated costs necessary to stabilize the area;
- B. temporary materials and seedings necessary to stabilize the area during construction; and
- C. permanent fencing of the area as determined by the district board.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2705 APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND ROADSIDE STABILIZATION.

Subpart 1. Definition. "Streambank, lakeshore, and roadside stabilization" means stabilizing and protecting streambank, lakeshore, and roadside areas against erosion by vegetative or structural means.

Subp. 2. Purpose. The purpose of streambank, lakeshore, and roadside stabilization is to control erosion or protect or improve water quality.

Subp. 3. Applicability. Streambank, lakeshore, and roadside stabilization may be used on eroding or sediment producing areas on streambank, lakeshore, or roadside sites where vegetative or structural measures are needed to correct the problem.

Subp. 4. Policy. Cost-sharing is authorized for:

- A. earthwork, materials, seed, and seedings necessary to stabilize the area;

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B. temporary materials and seedings necessary to stabilize the area during construction; and

C. permanent fencing of the area as determined by the district board.

Permanent fencing may be used as the sole remedy if it is determined by the district board to be the most practical solution, except that fencing of property boundaries and roads is ineligible for cost-sharing.

Subp. 5. **Cost-sharing limit.** Cost-sharing may not exceed 50 percent of total eligible project costs.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

COST-SHARE RATES

8400.2800 MAXIMUM RATES.

The maximum percent of the total cost of a practice installed to control a high priority erosion or water quality problem that may be funded by state cost-share funds is 75 percent except as stated in part 8400.2100, subpart 4. The maximum percent of the total cost of a practice installed to control a secondary priority nonshoreland erosion problem that may be funded by state cost-share funds is 50 percent except as stated in part 8400.2100, subpart 4. State cost-share funds may be matched with federal money or other state funds except as stated in part 8400.2100, subpart 4. The combined state and federal amount may not exceed the maximum rates in this part or part 8400.2705, subpart 5.

Statutory Authority: *MS s 40.036 subd 3*

History: *9 SR 2439*

8400.2900 DISTRICT RATES.

Each district shall establish its cost-share rates as provided in part 8400.0900.

Statutory Authority: *MS s 40.036 subd 3*

RIM RESERVE PROGRAM

NOTE: These rules were promulgated by the commissioner of agriculture, but are administered by the Board of Water and Soil Resources.

8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to 40.46 and 84.95, authorize the board, in cooperation with districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring drained wetlands, establishing windbreaks adjacent to highways, or enhancing and protecting other private lands. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the board and district boards in implementing Minnesota Statutes, sections 40.40 to 40.46.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 8400.3000 to 8400.3930.

Subp. 2. **Agricultural crop production.** "Agricultural crop production" means an agricultural activity:

A. including but not limited to tillage, planting, or harvesting operations; and

B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. [Repealed, 14 SR 1928]

Subp. 4. **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 40.07, subdivision 9, and according to the most recent version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans published by the state board. That publication is subject to frequent change. The most recent version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice that qualifies for RIM reserve program funding. All approved practices are described in the RIM reserve conservation practice specifications.

Subp. 6. **Authorized farm corporation.** "Authorized farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 6a. **Authorized farm partnership.** "Authorized farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 7. [Repealed, 14 SR 1928]

Subp. 8. **Board.** "Board" means the Board of Water and Soil Resources.

Subp. 9. **Conservation agreement.** "Conservation agreement" means a written contract stating the terms and conditions for conveying the conservation plan and the conservation easement by the landowner to the board.

Subp. 10. **Conservation easement, easement.** "Conservation easement" or "easement" has the meaning given for "conservation easement" in Minnesota Statutes, section 84C.01, paragraph (1).

Subp. 11. **Conservation plan.** "Conservation plan" means a written description of the approved practices that must be applied to the easement area.

Subp. 12. **Crop history.** "Crop history" means a sequence of agricultural crop production that includes at least one of the following activities on an annual basis: tillage, planting, or harvesting. For purposes of this part, land with a crop history includes acres devoted to "set-aside" and "conserving use" for the United States Department of Agriculture programs.

Subp. 13. **Cropland.** "Cropland" means an area devoted to agricultural crop production.

Subp. 14. **District.** "District" means a local soil and water conservation district organized under Minnesota Statutes, section 40.04.

Subp. 15. **District board.** "District board" means the five supervisors of a district authorized to carry out the functions of the district.

Subp. 16. **District cooperator.** "District cooperator" means a landowner who has requested the assistance of a district board in solving conservation problems and has entered into a written cooperator's agreement with the district board.

Subp. 17. **District technician.** "District technician" means a district employee or other nonfederal employee assigned to the district who has expertise in the design and application of soil and water conservation practices.

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation in an attempt to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.

Subp. 18. **Enduring practice.** "Enduring practice" means a soil and water conservation practice that is designed for an effective life of 20 years or more.

Subp. 19. **Family farm.** "Family farm" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 20. **Family farm corporation.** "Family farm corporation" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 20a. **Family farm partnership.** "Family farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

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Subp. 21. **Farm operation.** "Farm operation" means property owned or leased in Minnesota by the landowner that is associated with farming.

Subp. 22. **Farming.** "Farming" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 23. **Food plot.** "Food plot" means an area established annually for the purpose of providing food for wildlife.

Subp. 24. **Highway windbreak.** "Highway windbreak" means a strip or belt of trees, shrubs, or grass barriers at least six rows deep and within 300 feet of the right-of-way of a highway. Grass barriers must be used in conjunction with trees and shrubs.

Subp. 25. **Hydric soil.** "Hydric soil" means a soil in its natural undrained condition that is saturated at or near the surface or flooded frequently during much of the growing season, and that can support hydrophytic vegetation. The current list of hydric soils is available at the state law library and the district office, is subject to frequent change, and is incorporated by reference.

Subp. 26. **Hydrophytic vegetation.** "Hydrophytic vegetation" means herbaceous or woody plants that grow in water, in wet or saturated soils, or in soils that are at least periodically deficient in oxygen as a result of excess water.

Subp. 27. **Individual.** "Individual" means a person or legal entity, whether or not a resident of Minnesota.

Subp. 28. **Inherently unproductive.** "Inherently unproductive" means that the soil properties of available water capacity, bulk density, and pH in the uppermost 100 centimeters (39 inches) of a soil, are present so that an unfavorable rooting environment exists for agronomic crops.

Subp. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the period 1976 to 1985. These areas must be harvested by mechanical methods at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage and cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the period 1976 to 1985. These areas must be harvested by grazing at least two years during the period 1981 to 1985. These areas are considered to be in agricultural crop production.

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm partnership, authorized farm partnership, family farm corporation, authorized farm corporation, estate, or testamentary trust, who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. **Local emergency.** "Local emergency" means an emergency declared under Minnesota Statutes, section 12.29.

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is incorporated by reference. In addition, land immediately surrounding a sinkhole is marginal agricultural land.

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock on and before June 2, 1989, which has not been cultivated or interseeded at least twice during the period of 1976 to 1985, and therefore is not considered to be in agricultural crop production.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means land used for pasture in land capability classes III to VIII as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference.

Subp. 34. **Natural vegetation.** "Natural vegetation" means plant species including, but not limited to, grasses, trees, shrubs, or hydrophytic vegetation that form an area's noncultivated plant community, excluding the area immediately adjacent to buildings. An area is not considered in natural vegetation if it has been in agricultural crop production for at least one year since January 1, 1981.

Subp. 35. **Nonproduction practice.** "Nonproduction practice" means a soil and water conservation practice that is installed or applied to control soil erosion or sedimentation, protect or improve water quality, or create or enhance wildlife habitat. Practices installed or applied primarily to bring land into production or to increase short-term productivity are not nonproduction practices.

Subp. 36. **Permanent cover.** "Permanent cover" means the water area created by a restored wetland and the permanent vegetative cover established under the RIM reserve program.

Subp. 37. **Present value.** "Present value" means the value today of an amount that would have been received later, at a discount rate established annually by the board.

Subp. 38. **Protected water.** "Protected water" means public waters or wetlands, as defined in Minnesota Statutes, section 105.37, and inventoried under Minnesota Statutes, section 105.391. A copy of the inventory is available in the district office.

Subp. 39. **Public access.** "Public access" means the right of individuals to enter and exit private property. Under the RIM reserve program, public access is controlled by the landowner.

Subp. 39a. **Public water.** "Public water" means waters and wetlands as defined in Minnesota Statutes, section 105.37 and inventoried under Minnesota Statutes, section 105.391. A copy of the inventory is available in the district office.

Subp. 40. **Restored wetland.** "Restored wetland" means a drained wetland restored under the RIM reserve program if the wetland meets the definition of a wetland in subpart 48.

Subp. 41. **RIM reserve conservation practice specifications.** "RIM reserve conservation practice specifications" means the current edition of the board's publication containing detailed descriptions of the approved conservation practices found in part 8400.3660. This publication is subject to frequent change, is available at the state law library and at district offices, and is incorporated by reference.

Subp. 42. **RIM reserve program.** "RIM reserve program" means the Reinvest in Minnesota Resources Conservation Reserve program established in Minnesota Statutes, sections 40.41 to 40.46.

Subp. 42a. **Riparian.** "Riparian" means cropland adjacent to public water. For the RIM reserve program, the cropland must begin within 100 feet of the boundary of the public water to be eligible.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the RIM reserve program. The screening committee is chaired by a district board member and is composed of representatives of private, state, and local organizations or clubs, and local, state, and federal agencies with an interest in the RIM reserve program. A request for participation must be sent by the district at least annually to the: Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, United

States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and United States Soil Conservation Service.

Subp. 43a. Sensitive groundwater area. "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the board. Wellhead protection areas may be designated as a sensitive groundwater area.

Subp. 44. Significant potential soil productivity loss. "Significant potential soil productivity loss" means that soil productivity loss due to erosion may occur in a short time unless soil and water conservation practices are initiated to control soil erosion. The method of calculation combines the rating of a soil as a rooting environment with landscape characteristics that represent erosion potential.

Subp. 45. Soil and water conservation practice. "Soil and water conservation practice" means an approved conservation practice applied to land to control soil erosion, sediment, or other water pollutants as described in the RIM reserve conservation practice specifications.

Subp. 46. Soil mapping unit. "Soil mapping unit" means a unit or type of soil or combination of soils shown on a soil survey map.

Subp. 47. [Repealed, 14 SR 1928]

Subp. 48. Wetland. "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, or that periodically does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, including wetlands as defined in Minnesota Statutes, section 105.37.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The board shall allocate funds to participating district boards based on the following criteria:

- A. the number of applications recommended for approval by the district board;
- B. the proportion of marginal agricultural land in the district as compared to state totals;
- C. the potential for restoring drained wetlands;
- D. the need for highway windbreaks;
- E. the need for soil erosion or sediment control, protection or improvement of water quality, or improvement of fish and wildlife habitat; and
- F. the expressed interest and readiness of the district board, cooperating groups, and agencies to implement the program.

The allotted funds may be increased, decreased, or shifted by the board as necessary to maximize the use of funds among districts.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3100 ADMINISTRATION OF FUNDS.

The participating district board is responsible for administration of the funds in accordance with Minnesota Statutes, sections 40.40 to 40.46 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3110 EASEMENT DURATION.

The board may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on drained wetlands or land for highway windbreak purposes must be of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3130 PRIORITY SETTING.

Annually, before considering any applications from landowners, the participating district board shall call a screening committee meeting. The screening committee must establish priority areas within the district. Establishment of priority areas must be based on the following criteria:

- A. the priorities established by the board;
- B. the location of high priority soil erosion or water quality problem areas in the district as outlined in the district comprehensive and annual plans;
- C. the potential of the land for fish and wildlife production, reducing soil erosion, and protecting water quality;
- D. recommendations from technical agricultural and natural resource experts familiar with the district;
- E. the established priorities of the agencies and organizations represented on the screening committee;
- F. maximizing the benefits of current programs administered by the United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and Minnesota Department of Natural Resources; and
- G. the amount of RIM reserve program funds available.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Land eligible for the RIM reserve program must meet at least one of the following criteria:

- A. The land is marginal agricultural land.
- B. The land is agricultural land adjacent to marginal agricultural land that is being enrolled if enrollment of the adjacent land is beneficial to resource protection or necessary for efficient recording of the land description and if at least 50 percent of the total proposed acreage is marginal agricultural land.
- C. The land is drained wetland and cropland adjacent to the drained wetland, with up to four acres of adjacent cropland for each acre of restored wetland. In selecting drained wetlands for enrollment, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.
- D. The land is land that with a highway windbreak would control snow drifting and be beneficial to resource protection.
- E. The land is cropland in a sensitive groundwater area.
- F. The land is cropland riparian to public waters.
- G. The land is a woodlot on agricultural land.
- H. The land is an abandoned building site on agricultural land.
- I. The land is a pastured hillside.

In addition, eligible land must have all of the following characteristics:

- (1) The land has been in agricultural crop production for at least two years during the period 1981 to 1985, except drained wetlands, woodlots, abandoned building sites, or hillsides used for pasture.

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(2) The land has been owned by the landowner, or a parent or other blood relative of the landowner, for at least one year before the date of application.

(3) The land must be at least five acres in size, except for a highway windbreak, woodlot, abandoned building site, or must be a whole field as defined by the Agricultural Stabilization and Conservation Service.

(4) The land must not be within 200 feet of any building.

(5) The land must not be set-aside, enrolled, or diverted under another federal or state government crop land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal water bank.

(6) The land must be physically possible to crop, except for drained wetlands, woodlots, abandoned building sites, and hillsides used for pasture.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3200 MAXIMUM ENROLLMENT.

The total land for which a landowner may receive compensation from the RIM reserve program may not exceed 20 percent of the average farm size in the county where the land is being enrolled according to the average size determined by the most recent United States Department of Agriculture Census of Agriculture.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program must submit an application to the appropriate district office in which the land is located, during the application period established by the board, and on forms provided by the board. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application. The supportive information includes, but is not limited to:

A. crop history of the parcel;

B. aerial photographs or a sketch of the parcel; and

C. description of other land owned or leased as part of the same farm operation at the time of application.

The district technician shall make an initial determination of easement eligibility at the time of application. Applications having questionable eligibility must be referred to the district board for eligibility determination. Providing proof of eligibility is the responsibility of the landowner. The district technician shall develop a cost estimate for the easement and approved practices for all eligible applications. Other organizations and agencies may be requested to provide technical assistance in preparing cost estimates.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3260 LAND IN MORE THAN ONE DISTRICT.

If an application involves land in more than one district, application must be made to each district containing the proposed land. The affected districts shall cooperate to ensure a consistent and timely review of the proposed lands.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055*

8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW.

Upon completion of the application period and initial eligibility determination by the district technician, the screening committee shall confer and prioritize each eligible application. The criteria for screening committee prioritization are as follows:

- A. consistency with the purpose and policy of the RIM reserve program;
- B. the parcel's relationship to the priority areas previously determined in part 8400.3130;
- C. the parcel's potential impact on reducing soil erosion and sedimentation, improving water quality, and enhancing fish and wildlife habitat;
- D. potential title problems and encumbrances;
- E. compatibility with established priorities of the organizations and groups represented; and
- F. highest priority must be given to permanent easements that are consistent with Minnesota Statutes, section 40.41.

All eligible applications must be prioritized with recommendations and submitted to the district board for review. Applications with eligibility questions must be referred to the district board for eligibility determination before screening committee prioritization.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055*

8400.3330 CRITERIA FOR DISTRICT BOARD REVIEW.

Upon the receipt of the applications with screening committee prioritization, the district board shall meet and review the applications. Criteria for district board review are as follows:

- A. criteria in part 8400.3300 used in screening committee review;
- B. compatibility with district plans and priorities; and
- C. availability of funds from RIM reserve and other sources.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055*

8400.3360 DISTRICT ACTION ON APPLICATIONS.

Upon completion of district board review of the eligible applications, the following action must be taken:

- A. Applications approved for further processing are designated as approved and must be signed by the district chair or acting chair.
- B. High priority applications for which there are insufficient funds are designated as pending, with the consent of the landowner. These applications may be held in a pending status for up to 60 days while additional funds are sought.
- C. Applications not eligible or not of sufficient priority are designated as denied. The reason for the denial must be stated on the application.
- D. The district board shall notify all applicants in writing of their application designation status within 30 days after the end of the application period.
- E. Denied applications must be kept at the district office for a minimum of three years for future reference.
- F. When district board action results in prioritization differing from the screening committee recommendations, the screening committee must be notified within 30 days in writing by the district board.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055*

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall develop a conservation agreement for all approved applications in which the landowner agrees to:

A. convey to the state a conservation easement that is not subject to any prior title, lien, or encumbrance;

B. establish and maintain permanent cover and other conservation practices on the land subject to the easement as described in the conservation plan approved by the board, which is incorporated into the conservation easement;

C. convey to the state a permanent wetland restoration easement when a drained wetland is being restored;

D. not convert to agricultural crop production, pasture, or introduced pasture any other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if those lands support natural vegetation or have not been used in agricultural crop production, pasture, or introduced pasture except that land may be converted to pasture if done according to an approved district conservation plan;

E. the enforcement of the terms of the easement and agreements as provided in Minnesota Statutes, section 40.43, subdivision 9, or other relief authorized by law;

F. not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the board;

G. not produce agricultural crops, unless approved by the board for wildlife management purposes;

H. not graze livestock, except easements secured from the 1986, 1987, and 1988 application periods, may be grazed with the prior written approval of the board, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

I. be responsible for weed control and not to spray with chemicals or mow, except as necessary to comply with noxious weed control laws, or emergency control of pests necessary to protect public health, or to maintain permanent vegetative cover as approved by the district;

J. restore the easement area to the condition described in the conservation plan after any lawful repair or improvement of a public drainage system;

K. notify the board in writing within 30 days after the conveyance of all or part of the title or interest in the land in which the easement area is located by providing the names and addresses of the grantees, assignees, or heirs;

L. pay, when due, all taxes and assessments that may be levied against the easement area;

M. the running of the easement with the land and its being binding on all persons and entities who come into ownership or possession of the affected lands;

N. not place, erect, or construct temporary or permanent structures on the easement area;

O. allow the board and the board's employees and agents to enter the easement area for the purposes of inspection or enforcement of the terms and conditions of the easement; and

P. undertake the protection and management of the easement area in accordance with the conditions in the easement.

The conservation agreement must be recordable and on forms approved by the board.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

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8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

After the conservation agreement has been developed by the district board, the unsigned agreement must be processed as follows:

- A. It must be reviewed by a field representative of the board.
- B. It must have a review and determination by the board.
- C. The landowner must be notified of the board's decision.
- D. If it is approved by the board, the agreement must be given to the landowner for signature.
- E. The agreement must be returned to the board for signature by the necessary state officials and encumbrance of state funds.
- F. A copy of the signed agreement must be provided to the landowner.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the board's signing of the conservation agreement, the landowner, at the landowner's expense, shall deliver to the district office an original up-to-date abstract of title or registered property abstract, with certifications as to liens, bankruptcies, real estate taxes, and judgments. The landowner must have good and marketable title, not subject to any prior liens or encumbrances, as determined by the Attorney General, or an insurable title under a title insurance policy, not subject to any prior liens or encumbrances, approved by the Attorney General. Any title defect, liens, or encumbrances must be promptly removed or corrected by the landowner including, but not limited to, the following: lien waivers, releases or consent and subrogation from mortgagees, release or satisfaction of judgments, and receipt for payment of delinquent real estate taxes. The landowner's abstract of title must be returned to the landowner.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3500 EASEMENT CONVEYANCE.

Upon delivery and recording of a properly executed conservation easement, approved by the board, and the vesting of the easement interest in the board, not subject to any prior lien or encumbrances, payment must be made for the easement to the landowner, landowner's designees, assignees, or heirs.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3530 PAYMENT RATES.

Subpart 1. Calculation. The payment rate for the conservation easement must be calculated according to subparts 2 to 4.

Subp. 2. New easements. For permanent easements, payments are per acre figures derived from county average cash rent adjusted for countywide variations in estimated township market value. The figures are established on a township basis with the lower of the following two values selected as the payment:

A. 100 percent of the present value of the derived per acre figure calculated for perpetuity; or

B. 90 percent of estimated township market value. This payment method provides higher values for better quality land and ensures that payments do not exceed estimated market values. A schedule of payments for townships and unorganized areas is developed annually and is available at district offices or from the board.

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For limited duration easements not less than 20 years in length, payments are based on 65 percent of the permanent easement payment.

Payment rates for eligible lands without a cropping history must be based on a percentage of the permanent easement payment rate as determined by the board annually. There must be no compensation for the value of any buildings or other structures that may be on the easement area.

Payment rates may be modified prior to the sign up by the board if the board determines the rates established above do not reflect current market values based on the most recent land value market indicators.

The board shall annually establish the discount rate to be used for calculating present value. Average cash rent and estimated market value are based on information provided by the Department of Revenue in cooperation with local assessors.

Subp. 3. Conversion to permanent easement. When converting limited duration easements to permanent easements, the payment is the difference between the amount paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

Subp. 4. Approved practices. The payment rate for the approved conservation practice to be applied to the easement area is described in Minnesota Statutes, section 40.43, subdivision 6.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3560 PAYMENTS.

Payments for easements will be a one time lump sum amount unless the landowner requests a split payment for up to four equal annual installments for which no interest is paid. Payments may be assigned by the landowner.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055*

8400.3600 EASEMENT RENEWAL AND CONVERSION.

A. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by agreement of the board and the landowner under the rules in force at that time. The board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF EASEMENTS.

The board may alter, release, or terminate an easement after consultation with the commissioners of agriculture and natural resources. The board may alter, release, or terminate an easement only if the board determines the public interests and general welfare are better served by the alteration, release, or termination.

The board must be provided the following information at least 30 days prior to a board meeting, before the board will consider a request to alter, release, or terminate an easement:

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- A. a letter from the landowner justifying the change and identifying how the public interest and general welfare will be better served;
- B. a letter from the district board recommending the change;
- C. a letter from the Department of Natural Resources wildlife manager recommending the change; and
- D. other supporting documents, including:
 - (1) an aerial photo identifying the requested change;
 - (2) a soil survey map of the area;
 - (3) cropping history information; and
 - (4) other pertinent documentation that will support the request.

The board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The board must be compensated for all damages and loss of benefits to the conservation easement as well as administrative expenses and costs incurred in the alteration, release, or termination of an easement. Priority must be given to obtaining eligible replacement land rather than cash payment for damage or loss of benefits.

Statutory Authority: *MS s 40.45*

History: *14 SR 1928*

8400.3630 CRITERIA FOR APPROVED PRACTICES.

Approved practices must be enduring in nature and have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or creation or improvement of fish and wildlife habitat. The list is contained in part 8400.3660 and is further specified in the RIM reserve conservation practice specifications. Practices under this program must be designed for a minimum effective life of 20 years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits. Production practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for RIM reserve cost-sharing, but are allowed on enrolled acres if they are included in the conservation plan and approved by the board in cooperation with the commissioner of natural resources.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3660 LIST OF APPROVED PRACTICES.

Approved practices include, but are not limited to:

- A. permanent vegetative cover;
- B. tree and shrub planting;
- C. field windbreak;
- D. highway windbreak;
- E. stormwater control system;
- F. diversion; and
- G. structures for water control.

The approved practices are further described in the RIM reserve conservation practice specifications.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055*

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

Subpart 1. Installation of approved practices. Establishment of approved

practices must be monitored by the district board to ensure compliance with the easement. Upon completion of an annual component or the entire plan a district technician shall certify whether or not the practice has been satisfactorily performed, including certification that the practice meets the RIM reserve conservation practice specifications. Upon certification of completion, the landowner shall present documentation to the district of the costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 2. Costs for approved practices.

A. The district board shall review the receipts and invoices provided by the landowner to determine the actual cost eligible for RIM reserve payment. If the district board determines that the claims are reasonable and necessary, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the board. If the district board determines that certain claims are not justified or not eligible, it shall notify the landowner in writing of the unjustified claim within 30 days. The landowner may request reconsideration of this determination by the district board within 15 days of receipt of the determination. If additional eligible costs are justified, the district board shall then recommend payment for the approved amount. The board reserves the right to determine whether claims for payment are reasonable and necessary.

B. The state is only financially obligated up to the amount encumbered for each approved practice as stated in the conservation plan attached to the conservation easement, and any costs exceeding this amount are the responsibility of the landowner.

C. If the actual cost of installing the approved practices in the conservation plan are less than the encumbered amount, the state shall only pay the applicable cost of the installation in accordance with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2).

D. The board may encumber additional funds for eligible costs if the additional encumbrance is consistent with the purpose and policy of the RIM reserve program and the maximum amounts in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2), are not exceeded.

Subp. 3. Payment for in kind services. In kind services provided by the landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner's share of the total cost of the practice. The district board shall determine whether charges for in kind services are practical and reasonable.

Subp. 4. Funds from other sources. RIM reserve funds may be augmented by funds from other agencies, organizations, or individuals. Securing these funds is the responsibility of the landowner. Requirements for obtaining these funds are determined by the contributor.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3730 FAILURE OF APPROVED PRACTICES.

A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the board that additional RIM reserve funds be encumbered for reinstallation of the approved practices. The encumbrance must comply with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2), and cannot exceed the amount encumbered for the initial installation. In no case may a district board provide financial assistance to a landowner for the reapplication of approved practices that were removed, altered, or failed due to improper maintenance during the term of the easement.

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Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3760 [Repealed, 14 SR 1928]**8400.3800 MAINTENANCE.**

A landowner is responsible for planting, establishment, operation, and maintenance of approved practices described in the conservation agreement and for ensuring that easement restrictions are followed so that the easement's conservation objective is met and the effective life of 20 or more years is achieved.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055*

8400.3830 VIOLATIONS.

The board may enforce the easement and agreement by the legal action in items A and B.

A. A landowner who violates the terms of a conservation easement or agreement under this chapter, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

B. Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 40.41 to 40.46 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

The district board may recommend to the board appropriate measures to be taken to correct violations. Easements remain in effect even if maintenance violations have occurred.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3860 MONITORING.

The board may require reports from the district to monitor the progress of the RIM reserve program and the use of funds. The reports must be on forms provided by the board.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the board. The ledger must specify the names of the landowners with whom the easements have been developed, the approved practices involved, the status of permanent cover establishment, the total of funds encumbered and expended, the size and type of easements, and their effective date.

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

8400.3930 RECONSIDERATION AND REVIEW.

Subpart 1. Procedures. Procedures for reconsideration and review of applications are in subparts 2 to 4.

Subp. 2. Reconsideration by district. An affected landowner may request the

district board to reconsider its recommendations that deny landowner acceptance under the RIM reserve program by mailing a written request to the district within 15 days of receipt of the notice of denial of ineligibility, stating the specific reasons for claiming eligibility or a higher priority and including additional evidence to support the landowner's claims. The district shall notify the landowner of the final recommendation of the district board.

Subp. 3. Review by state board. An affected landowner may request the state board to review, on the record, the final recommendations of the district board that deny a landowner eligibility under the RIM reserve program by mailing a written request to the state board within 15 days after receipt of the final recommendation of the district board, stating the specific reasons for claiming eligibility, or a higher priority. The state board shall notify the landowner and district board of its recommendations.

Subp. 4. [Repealed, 14 SR 1928]

Statutory Authority: *MS s 40.45*

History: *13 SR 1055; 14 SR 1928*

EXCESSIVE SOIL LOSS CONTROL

8400.4000 GENERAL PROVISIONS.

Subpart 1. Purpose. The purpose of parts 8400.4000 to 8400.4080 is to reduce the amount of soil erosion on Minnesota land. The benefits of the local adoption of parts 8400.4000 to 8400.4080 include decreasing the amount of off-site damages from sediment, retaining the productivity of the soil, and improving water quality.

Subp. 2. Policy. Parts 8400.4000 to 8400.4080 are adopted in accordance with Minnesota Statutes, sections 40.19 to 40.28 and apply to all activities which cause excessive soil loss.

Subp. 3. Scope. Parts 8400.4000 to 8400.4080 pertain to all activities that will disturb the land surface and cause excessive soil loss, and are consistent with the minimum degree of local protection against soil erosion. Local governments may enact soil loss limits which are more restrictive than parts 8400.4000 to 8400.4080.

Subp. 4. Voluntary adoption. A local government of a county, home rule charter or statutory city, or town with the authority to adopt and administer an ordinance may choose to adopt and administer soil loss limits. Parts 8400.4000 to 8400.4080 are only applicable if the local government adopts a soil loss limits ordinance under Minnesota Statutes, sections 40.19 to 40.28.

Subp. 5. Conformance with local ordinances. A local soil loss limits ordinance must not violate an ordinance the local government is enforcing.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4002 DEFINITIONS.

Subpart 1. Scope. For the purpose of parts 8400.4000 to 8400.4080 the terms defined in this part have the meanings given.

Subp. 2. Agricultural use. "Agricultural use" means the use of land for the production of livestock, dairy animals, dairy products, poultry or poultry products, fur bearing animals, horticultural or nursery stock, including sod, fruit, vegetables, forage and cash grains, forestry, or bees and apiary products. Wetlands, pasture, and woodlands accompanying land in agricultural use are also defined as an agricultural use.

Subp. 3. Board. "Board" means the state Board of Water and Soil Resources created under Minnesota Statutes, chapter 40.

Subp. 4. Commissioner. "Commissioner" means the commissioner of agriculture or a designated agent.

Subp. 5. Conservation plan and time schedule. "Conservation plan" means a document listing a set of practices that, when implemented, will decrease soil erosion to the soil loss limits on a particular parcel of land. The "time schedule" will set times to implement, make satisfactory progress on, and complete the conservation plan.

Subp. 6. Conservation practice. "Conservation practice" means a practice containing a definition, purpose, conditions under which the practice is applied including design requirements, and specifications containing a statement of details required for installing a conservation practice, including necessary kinds, quality, and quantity of work and materials. A conservation practice may be a permanent or temporary, vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion and sedimentation. "Conservation practices" may be used in a development activity area or an agricultural area. Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, stripcropping, water and sediment control basins, and other permanent practices approved by the board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, fabric filter barriers, filter strips, stormwater inlet and outlet protection, and any other cultural practices approved by the board. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

Subp. 7. Development activity. "Development activity" means a physical disturbance, excluding agricultural use, of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining, and filling lands. Federal, state, county, and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.

Subp. 8. District. "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 9. Erosion. "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of man or nature.

Subp. 10. Excessive soil loss. "Excessive soil loss" means soil loss that is greater than the soil loss limit or which causes sedimentation on adjoining land or in a body of water, watercourse, or wetland.

Subp. 11. Field office technical guide. "Field office technical guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be estimated, and conservation practice standards and specifications required in the application of soil and water conservation practices.

Subp. 12. Land occupier. "Land occupier" means a person, firm, corporation, municipality, or other legal entity that owns or possesses land as owner, lessee, renter, tenant, or otherwise. The terms include both the owner and the occupier of the land if they are not the same.

Subp. 13. Local government. "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include a soil and water conservation district, water management organization, joint power board, watershed district, or other governmental entity responsible for resource management within the affected jurisdiction.

Subp. 14. Sediment. "Sediment" means solid mineral or organic material that is in suspension or motion, being transported or has been moved from its original site by air, water, gravity, or ice.

Subp. 15. **Sedimentation.** "Sedimentation" means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.

Subp. 16. **Sedimentation control plan; time schedule.** "Sedimentation control plan" means a document listing a set of practices that, when implemented, will decrease sedimentation to the allowable level on a particular parcel of land. A "time schedule" must set times to implement, make satisfactory progress on, and complete the "sedimentation control plan."

Subp. 17. **Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

Subp. 18. **Soil loss limits.** "Soil loss limits" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. The local soil loss limits ordinance must use the soil loss tolerance for each soil series described in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county, whichever is more current.

Subp. 19. **Soil loss tolerance.** "Soil loss tolerance" means the maximum rate of annual soil erosion that will permit crop productivity to be sustained economically and indefinitely. In Minnesota, "soil loss tolerance" ranges from one to five tons per acre per year depending on the particular soil characteristics. "Soil loss tolerance" values for Minnesota soil series are provided in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county.

Statutory Authority: *MS s 40.21*

History: *11 SR 742; L 1987 c 358 s 34*

8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, a local government may adopt soil loss limits which meet the minimum standards and criteria for soil loss, and once adopted shall administer and enforce the soil loss limits ordinance.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, districts shall:

A. provide assistance to local governments in determining whether excessive soil loss is occurring;

B. provide assistance to the land occupiers in developing a conservation plan and time schedule suggesting conservation practices and a time schedule for their application;

C. make available to land occupiers state cost-share funds as provided by parts 8400.4045 and 8400.4060;

D. provide assistance to local governments in the development, review, monitoring, and enforcement of local soil loss limits ordinances, conservation plans, and time schedules, and sedimentation control plans and time schedules; and

E. provide assistance to the commissioner in the development and review of additional adequate technical information.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4015 COMMISSIONER'S DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, the commissioner of agriculture shall:

A. establish statewide standards reviewed every five years, for the management of land to prevent excessive soil loss from occurring;

B. upon request, assist the local government in the drafting of a soil loss limits ordinance which meets the provisions of Minnesota Statutes, sections 40.19 to 40.28 and parts 8400.4000 to 8400.4080 which assistance includes, but is not limited to, creation of specific guidelines to be used locally in the formulation of reasonable regulations and other conservation practices based on sound technical data and consistent with statewide standards and community land use needs;

C. where sufficient information is not available, cooperate to the fullest extent with appropriate federal, state, and local governments in securing adequate technical information;

D. periodically review and upgrade soil loss limits criteria based on new technical methodologies;

E. disseminate to the local government, whenever available, technical information including information of federal, state, and local programs, educational materials and other material useful in carrying out a soil loss limits program; and

F. coordinate federal, state, and local soil loss limits activities in the state.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4025 MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS ORDINANCES.

Subpart 1. Permitted soil loss. Local government soil loss limits must use the soil loss tolerance for each soil series as the maximum amount of soil loss permitted. The final recommendation of the soil loss tolerance information used rests with the district.

Subp. 2. Permitted sedimentation limits. Local government sedimentation limits must minimize sediment on adjoining land or in a body of water, watercourse, or wetland. In establishing these sedimentation limits the local government shall give consideration to the nature of the affected land or water. In making these determinations the local government should seek the advise of local, state, and federal agencies.

Subp. 3. Sedimentation control plan. Local government soil loss limits must require that a sedimentation control plan and time schedule must be developed by a land occupier and submitted to the local government before any development activity begins. The following must be addressed in developing and implementing a sedimentation control plan:

A. stabilization of denuded areas and soil stockpiles;

B. establishment of permanent vegetation;

C. protection of adjacent properties;

D. timing and stabilization of sediment trapping measures;

E. sediment basins;

F. stabilization of cut and fill slopes;

G. stabilization of watercourses;

H. stabilization of construction access routes;

I. disposition of all temporary measures; and

J. maintenance of all temporary and permanent urban conservation practices.

Subp. 4. **Model ordinances.** The model ordinances incorporated by reference in part 8400.4080 are the minimum standards for the adoption or amendment of soil loss limits under Minnesota Statutes, sections 40.19 to 40.28. A local government may adopt soil loss limits which are stricter than the model ordinances.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4030 PROHIBITED ACTIVITIES.

Subpart 1. **General prohibition.** A person may not cause, conduct, contract for, or authorize an activity which causes excessive soil loss.

Subp. 2. **Agricultural activity.** A land occupier shall:

A. if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

B. if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths;

C. if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss; and

D. if a body of water, watercourse, or wetland is located within an agricultural use area, wooded or open land used for pasture, or a wooded area used for timber harvest, ensure that proper management and conservation practices are being applied to the surrounding land.

Subp. 3. **Agricultural land occupier.** A land occupier of agricultural land is not violating subparts 1 and 2 if the district report, as developed through part 8400.4040, subpart 3, shows that the existing farming practices and methods being applied are effectively controlling soil loss.

Subp. 4. **Development activity.** A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss or sediment from damaging adjacent land, bodies of water, watercourses, or wetlands, to the local government for its approval.

Subp. 5. **Road construction and maintenance.** A land occupier engaged in federal, state, county, municipal, or township road construction and maintenance is not violating subpart 1 if the road construction and maintenance is designed and installed according to Department of Transportation standard specifications for construction and maintenance.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4037 PROCEDURE FOR DEVELOPMENT ACTIVITY.

Subpart 1. **Submission of sedimentation control plan and time schedule.** A land occupier shall submit a sedimentation control plan and time schedule to the local government for approval prior to beginning any development activity which will disturb over one acre of land.

Subp. 2. **Specification of methods.** A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized during the construction process. A sedimentation control plan and time schedule must address the items in part 8400.4025, subpart 3. Urban conservation practices in a sedimentation plan may include, but are not limited to, the use of temporary seeding, fabric fiber barriers, plastic, straw mulch, sediment control basins, or other conservation practices adequate to prevent erosion and sediment damage.

Subp. 3. **Conformance with local ordinances.** Any method used in controlling sedimentation developed for the sedimentation control plan must not violate any existing ordinance the local government is enforcing.

Subp. 4. Review of plan and schedule. The local government may appoint the zoning or planning director, building inspector, engineer, or district to review the sedimentation control plan and time schedule. The local government must forward the sedimentation control plan and time schedule to the appointed reviewer within seven days of receiving the sedimentation control plan and time schedule from the land occupier.

Subp. 5. Time for review. The appointed reviewer shall review the sedimentation control plan and time schedule within 21 days of receiving the plan from the local government. The local government shall notify the land occupier of its decision after receipt of comments from the reviewer and no more than 28 days after receiving the sedimentation control plan and time schedule from the land occupier.

Subp. 6. Issuance of permit. If the reviewer determines that the sedimentation control plan and time schedule will prevent sedimentation, the local government shall issue a permit that authorizes the development activity contingent upon the implementation of the sedimentation control plan and time schedule.

Subp. 7. Denial of permit. If the reviewer determines that the sedimentation control plan and time schedule does not control sedimentation, the local government shall not issue a permit for the development activity. The sedimentation control plan and time schedule must be resubmitted for approval before the development activity begins.

Subp. 8. Penalty. A land occupier engaged in a development activity who does not obtain an approved sedimentation control plan and time schedule or does not commence or complete the plan or make satisfactory progress to complete the plan is subject to a civil penalty and the local government shall file the complaint with the county attorney.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4040 PROCEDURE FOR AGRICULTURAL ACTIVITIES.

Subpart 1. Complaint. Adversely affected land occupiers, elected or duly appointed officials of the local government, or district board members may submit a signed written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land. The local government shall submit the complaint to the district for soil loss determination. The local government shall notify the alleged offending land occupier of the complaint and that the district will be contacting the land occupier to review the site, determine the severity of the problem, and assist the land occupier in correcting the problem. The local government shall also name a contact person for further assistance.

The signed written complaint must include:

- A. the name and address of the alleged offending land occupier;
- B. the location of the tract of land with the alleged excessive soil loss;
- C. other land or water that is allegedly being affected by the excessive soil loss; and
- D. a description of the nature of the alleged excessive soil loss and resulting sedimentation.

Subp. 2. Determination. Upon request by the local government, the district shall determine the average annual soil loss in tons per acre per year of the tract of land cited in the complaint. The district may enter public or private land to make an inspection for the determination of soil loss or to complete the report. The district shall notify the land occupier of the time of the inspections and give the land occupier an opportunity to be present when the inspection is made.

The notice must:

- A. be given ten days prior to the date of the inspection;

B. be delivered either by personal service or certified mail; and

C. if the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.

Subp. 3. Report. The district shall submit a report to the local government that states the average soil loss in tons per acre per year for each tract of land and if that soil loss is excessive under the applicable soil loss limits.

If the soil loss is excessive, the report must include identification of existing farming practices and a preliminary conservation plan and time schedule that will prevent excessive soil loss.

If the report shows that soil loss from the tract of land is equal to or below the soil loss tolerance for that soil series, the local government shall dismiss the complaint and notify the land occupier.

Subp. 4. Notification of excessive soil loss. If the local government finds that excessive soil loss is occurring, it must give written notification to the land occupier. The notification must:

A. describe the land and state the extent to which soil loss exceeds the soil loss limits;

B. be delivered within ten days of the local government's decision;

C. be delivered either by personal service or by certified mail; and

D. state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

Subp. 5. Mediation. If the district report shows that soil loss from a tract of land is excessive and conservation practices are available to reduce the soil loss, the local government shall request the offending land occupier to participate in mediation with the local government. The local government may appoint the planning and zoning director, a planning commissioner, or other official to act as mediator. The local government also may contract with a private mediation center to provide mediation services.

The land occupier and local government must attempt to agree on a conservation plan and time schedule that will reduce soil loss to the acceptable limits set by a local soil loss limits ordinance.

A mediated settlement must be approved by the local government and land occupier, put in writing, and filed with the county.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4045 COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.

When the local government approves the mediated written agreement, the land occupier has 90 days to apply for state cost-share funds that will provide 75 percent of the cost of the permanent conservation practices.

If the land occupier does not apply for cost-share funds within 90 days after the local government approves the mediated written agreement, only 50 percent cost-share funds may be provided. The land occupier must apply for 50 percent cost-share funds within 270 days after the mediated written agreement is approved.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state or federal guidelines.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4050 COST-SHARE PROGRAM

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8400.4050 PENALTY.

If a land occupier does not comply with the provisions of the notification or mediated written agreement, the land occupier is subject to a civil penalty up to \$500.

The local government shall file the complaint with the county attorney.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4055 HEARING PROCEDURE.

If the land occupier and local government do not reach a mediated written agreement or if the land occupier has refused mediation, the local government shall forward the complaint to the county attorney. The county attorney may petition the district court for a hearing.

At the hearing, the land occupier may present a conservation plan and time schedule as an alternative to the conservation plan and time schedule developed by the local government. The court shall review both plans and order the land occupier to implement the conservation plan and time schedule that will reduce soil loss to at least the soil loss limit. The court may choose to amend the conservation plan and time schedule developed by the local government or land occupier or develop a new conservation plan and time schedule.

The settlement must be put in writing and filed with the appropriate county official.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4060 COST-SHARE FUNDS FOR A COURT ORDER.

Subpart 1. Alternative plans. If the court orders the implementation of the land occupier's conservation plan and time schedule, an amended conservation plan and time schedule, or a new conservation plan and time schedule, the offending land occupier is eligible to apply for 75 percent cost-share funds for permanent conservation practices on that tract of land.

The land occupier must apply for those cost-share funds within 90 days after the court order. If the land occupier does not apply for the cost-share funds within 90 days, the cost-share funds are reduced to 50 percent. The court shall establish a time when the land occupier is no longer eligible for cost-share funds at 50 percent.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state or federal guidelines.

Subp. 2. Local government plan. If the court orders the implementation of the conservation plan and time schedule developed by the local government, the offending land occupier is eligible for only 50 percent cost-share funds for permanent conservation practices on that tract of land. To qualify for those cost-share funds, the land occupier must apply for those cost-share funds within 90 days after the court order.

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements must follow the current state and federal guidelines.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4065 PENALTY.

A land occupier who does not comply with a court-ordered agreement is subject to a civil penalty up to \$500.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4070 ESTABLISHMENT OF COST-SHARE FUNDS.

Except for a development activity, a land occupier may apply for cost-share funds in the amounts set in parts 8400.4045 and 8400.4060. If cost-share funds are not currently available, the land occupier and the district shall enter into a priority cost-share assistance contract for future cost-share funds. The priority cost-share assistance contract must state the percentage of cost-share funds as set in parts 8400.4045 and 8400.4060. With the approval of the priority cost-share assistance contract, the land occupier is considered to be in compliance with the mediated or court ordered agreement.

The priority cost-share assistance contract, prepared by the commissioner of agriculture, is incorporated by reference. This document is subject to frequent change and is available at the state law library.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4075 VARIANCES.

Subpart 1. Land occupier variance. A land occupier may petition the local government for a variance from part 8400.4040 due to economic hardship or technical infeasibility.

Subp. 2. Local government variances. If a local government feels that a particular requirement of parts 8400.4000 to 8400.4070 prevents conservation practices or sedimentation control practices from being installed, a written request for a variance may be filed with the board. The request must contain:

A. the name and address of the local government making the request and the signature of the appropriate personnel;

B. the nature of the variance being sought, including an identification of the applicable rule from which the variance is sought, the time period for which it is sought, and the reason for seeking the variance;

C. a statement of alternatives for dealing with installation of the affected practices if the variance is not granted; and

D. a statement of the effects on applicable natural resources and the public if the variance is granted.

Subp. 3. Decision. Local government variance requests must be submitted to the board at least 30 days prior to the board meeting at which the variance is to be considered. Within 45 days after the meeting, the board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance may not be granted if it is in conflict with any statute.

Subp. 4. Modifications. If a variance has been granted by the board, the local government holding the variance may file with the board, at any time, a written request for modification or amendment of the variance. The request for modification or amendment and the board's consideration of the request must comply with this part.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

8400.4080 MODEL ORDINANCE.

The model ordinance, prepared by the commissioner of agriculture, in consultation with counties, districts, and other appropriate agencies, pursuant to

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Minnesota Statutes, section 40.21, subdivision 1, is incorporated by reference. That document may be subject to change and is available at the state law library.

Statutory Authority: *MS s 40.21*

History: *11 SR 742*