

**CHAPTER 8400**  
**BOARD OF WATER AND SOIL RESOURCES**  
**LAND AND WATER TREATMENT PROGRAM**

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**8400.0050 PURPOSE.**

The land and water treatment program is administered through districts to provide financial and technical assistance to land occupiers for the application of conservation practices that reduce

erosion, control sedimentation, improve and protect water quality, or address water quantity problems due to altered hydrology to ensure the sustainable use of Minnesota's natural resources.

**Statutory Authority:** *MS s 103C.501; 103F.531*

**History:** *20 SR 2185; 37 SR 1277*

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## EROSION CONTROL AND WATER MANAGEMENT PROGRAM

### 8400.0060 AUTHORITY.

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the districts, to administer a program of cost sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0060 to 8400.1900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts and standards and guidelines that the district boards shall use in allocating funds to land occupiers.

**Statutory Authority:** *MS s 103C.501; 103F.531*

**History:** *37 SR 1277*

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### 8400.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.0050 to 8400.1900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 103C, apply.

Subp. 1a. [Repealed, 20 SR 2185]

Subp. 2. [Repealed, 20 SR 2185]

Subp. 2a. [Repealed, 37 SR 1277]

Subp. 3. **Annual work plan.** "Annual work plan" means a plan prepared by the district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, paragraph (e), and according to the most recent policy published by the state board.

Subp. 4. [Repealed, 37 SR 1277]

Subp. 5. [Repealed, 20 SR 2185]

Subp. 5a. **Comprehensive local water plan.** "Comprehensive local water plan" means a local water plan authorized under Minnesota Statutes, section 103B.311; a watershed overall plan required under Minnesota Statutes, section 103D.401; a watershed management plan required under Minnesota Statutes, section 103B.231; or a county groundwater plan authorized under Minnesota Statutes, section 103B.255.

Subp. 6. [Repealed, 20 SR 2185]

Subp. 7. [Repealed, 9 SR 2439]

Subp. 7a. [Repealed, 20 SR 2185]

Subp. 8. **Comprehensive plan.** "Comprehensive plan" means a long-range plan adopted by the district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, and according to the most recent policy published by the state board.

Subp. 8a. [Repealed, 20 SR 2185]

Subp. 8b. **Conservation practices.** "Conservation practices" means practices applied to the land for the purpose of controlling or preventing soil erosion, sedimentation, nutrient runoff, or other water pollution to maintain the sustainable use of soil and water and other natural resources.

Subp. 9. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 10. **District board.** "District board" means the board of supervisors of a soil and water conservation district as organized under Minnesota Statutes, chapter 103C.

Subp. 10a. [Repealed, 37 SR 1277]

Subp. 10b. [Renumbered subp 8b]

Subp. 11. [Repealed, 20 SR 2185]

Subp. 12. [Repealed, 20 SR 2185]

Subp. 13. [Repealed, 20 SR 2185]

Subp. 14. **Effective life.** "Effective life" means the time span for which a conservation practice effectively fulfills its intended purpose.

Subp. 14a. [Repealed, 20 SR 2185]

Subp. 14b. [Repealed, 37 SR 1277]

Subp. 15. [Repealed, 37 SR 1277]

Subp. 16. [Repealed, 37 SR 1277]

Subp. 16a. [Repealed, 37 SR 1277]

Subp. 16b. [Repealed, 37 SR 1277]

Subp. 17. [Repealed, 9 SR 2439]

Subp. 18. **Land occupier.** "Land occupier" means a person, corporation, or legal entity that holds title to or is in possession of land within a district as an owner, lessee, tenant, or otherwise.

Subp. 18a. [Repealed, 37 SR 1277]

Subp. 18b. [Repealed, 37 SR 1277]

Subp. 19. [Repealed, 20 SR 2185]

Subp. 19a. [Repealed, 37 SR 1277]

Subp. 20. [Repealed, 20 SR 2185]

Subp. 20a. [Repealed, 37 SR 1277]

Subp. 20b. [Repealed, 37 SR 1277]

Subp. 20c. [Repealed, 20 SR 2185]

Subp. 20d. [Repealed, 37 SR 1277]

Subp. 21. [Repealed, 20 SR 2185]

Subp. 22. [Repealed, 20 SR 2185]

Subp. 22a. [Repealed, 37 SR 1277]

Subp. 23. **State board.** "State board" means the state Board of Water and Soil Resources created in Minnesota Statutes, section 103B.101.

Subp. 24. [Repealed, 9 SR 2439]

Subp. 25. [Repealed, 37 SR 1277]

Subp. 26. [Repealed, 37 SR 1277]

Subp. 27. [Repealed, 37 SR 1277]

**Statutory Authority:** *MS s 40.036; 103C.501; 103F.531*

**History:** *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185; 37 SR 1277*

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**8400.0200** [Repealed, 37 SR 1277]

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#### **8400.0250 PROGRAM POLICY.**

The state board shall adopt policies providing for administration and implementation of parts 8400.0500 to 8400.1900.

**Statutory Authority:** *MS s 103C.501; 103F.531*

**History:** *37 SR 1277*

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### **STATE BOARD FUNCTIONS**

#### **8400.0300 APPROVED CONSERVATION PRACTICES.**

Subpart 1. [Repealed, 37 SR 1277]

Subp. 2. **Criteria for approved conservation practices.** Practices eligible for cost-share funds must meet the criteria in items A to D.

A. The objectives of the approved conservation practices may include, but are not limited to, activities that:

- (1) control nutrient runoff;
- (2) control sedimentation;
- (3) divert runoff to protect and improve water quality;
- (4) reduce wind erosion;
- (5) control gully, rill, or sheet erosion;
- (6) protect shoreland from erosion;
- (7) control stormwater runoff;
- (8) protect or improve surface water and groundwater quality;
- (9) provide energy conservation and snow protection; or
- (10) address water quantity problems due to altered hydrology.

B. Practices to restore, protect, or enhance natural wildlife, aquatic, or native plant habitat are eligible when used in combination with the practices listed in item A.

C. No cost-share funds shall be furnished for conservation practices designed primarily to increase land productivity.

D. All conservation practices must be consistent with the district's comprehensive plan.

Subp. 3. [Repealed, 37 SR 1277]

**Statutory Authority:** *MS s 40.036; 103C.501; 103F.531; L 1999 c 231 s 203*

**History:** *9 SR 2439; 20 SR 2185; 24 SR 1240; 37 SR 1277*

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**8400.0600** Subpart 1. [Repealed, 37 SR 1277]

Subp. 2. [Repealed, 9 SR 2439]

Subp. 3. [Repealed, 37 SR 1277]

Subp. 4. [Repealed, L 2023 c 60 art 5 s 22]

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### DISTRICT FUNCTIONS

**8400.0900** Subpart 1. [Repealed, L 2023 c 60 art 5 s 22]

Subp. 2. [Repealed, L 2023 c 60 art 5 s 22]

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### **EASEMENT PROGRAM**

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**8400.3030** Subpart 1. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 2. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 3. [Repealed, 14 SR 1928; L 2024 c 90 art 3 s 88]

Subp. 3a. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 4. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 5. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 6. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]

Subp. 6a. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]

Subp. 7. [Repealed, 14 SR 1928; L 2024 c 90 art 3 s 88]

Subp. 8. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]

Subp. 9. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 10. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 10a. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]

Subp. 10b. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 11. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 11a. [Repealed, L 2024 c 90 art 3 s 88]

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Subp. 13. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]

Subp. 14. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 15. [Repealed, L 2024 c 90 art 3 s 88]

Subp. 16. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]

Subp. 17. [Repealed, L 2024 c 90 art 3 s 88]



- Subp. 17a. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 17b. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 18. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]
- Subp. 19. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 20. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 20a. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 20b. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 21. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]
- Subp. 22. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]
- Subp. 23. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 24. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 25. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 26. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 27. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 28. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 29. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 30. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 31. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 31a. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 32. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]
- Subp. 33. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 33a. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 33b. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 34. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]
- Subp. 35. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]
- Subp. 36. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 36a. [Repealed, L 2024 c 90 art 3 s 88]
- Subp. 37. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]

- Subp. 38. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]  
Subp. 39. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]  
Subp. 39a. [Repealed, L 2024 c 90 art 3 s 88]  
Subp. 39b. [Repealed, L 2024 c 90 art 3 s 88]  
Subp. 39c. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]  
Subp. 40. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]  
Subp. 41. [Repealed, 19 SR 550; L 2024 c 90 art 3 s 88]  
Subp. 42. [Repealed, L 2024 c 90 art 3 s 88]  
Subp. 42a. [Repealed, L 2024 c 90 art 3 s 88]  
Subp. 43. [Repealed, L 2024 c 90 art 3 s 88]  
Subp. 43a. [Repealed, L 2024 c 90 art 3 s 88]  
Subp. 44. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]  
Subp. 45. [Repealed, L 2024 c 90 art 3 s 88]  
Subp. 46. [Repealed, 37 SR 1277; L 2024 c 90 art 3 s 88]  
Subp. 47. [Repealed, 14 SR 1928; L 2024 c 90 art 3 s 88]  
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Subp. 2a. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Subp. 3. [Repealed, 19 SR 550, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

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## **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 103F.401 to 103F.455 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 103F.401 to 103F.455.

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; 103F.411*

**History:** *11 SR 742*

**Published Electronically:** *March 7, 2013*

#### **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, section 103B.101.

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, strip-cropping, 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 103C.

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 people 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, Natural Resources 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 Natural Resources 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 Natural Resources Conservation Service Soil Survey for a particular county.

**Statutory Authority:** *MS s 40.21; 103F.411*

**History:** *11 SR 742; L 1987 c 358 s 34; 17 SR 1279; L 2015 c 21 art 1 s 109*

**Published Electronically:** *January 30, 2024*

#### **8400.4005 LOCAL DUTIES.**

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, 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; 103F.411*

**History:** *11 SR 742*

**Published Electronically:** *March 7, 2013*

#### **8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.**

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, 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; 103F.411*

**History:** *11 SR 742*

**Published Electronically:** *March 7, 2013*

#### **8400.4015 COMMISSIONER'S DUTIES.**

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, the Board of Water and Soil Resources 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 103F.401 to 103F.455 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; 103F.411*

**History:** *11 SR 742; L 2014 c 275 art 1 s 138*

**Published Electronically:** *August 4, 2014*



**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 103F.401 to 103F.455. A local government may adopt soil loss limits which are stricter than the model ordinances.

**Statutory Authority:** *MS s 40.21; 103F.411*

**History:** *11 SR 742*

**Published Electronically:** *March 7, 2013*

**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*

**Published Electronically:** *March 7, 2013*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **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 Board of Water and Soil Resources, 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; L 2014 c 275 art 1 s 138*

**Published Electronically:** *August 4, 2014*

#### **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*

**Published Electronically:** *March 7, 2013*

#### **8400.4080 MODEL ORDINANCE.**

The model ordinance, prepared by the Board of Water and Soil Resources, in consultation with counties, districts, and other appropriate agencies, pursuant to Minnesota Statutes, section 103F.411, 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; 103F.411*

**History:** *11 SR 742; L 2014 c 275 art 1 s 138*

**Published Electronically:** *August 4, 2014*