

MINNESOTA CODE OF AGENCY RULES

RULES OF THE SOIL AND WATER CONSERVATION BOARD

1982 Reprint



All rules as in effect on September 15, 1982

Prepared by

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Room 3, State Capitol, St. Paul, Minnesota 55155**

Distributed by

**STATE REGISTER AND PUBLIC DOCUMENTS DIVISION
DEPARTMENT OF ADMINISTRATION
117 University Avenue, St. Paul, Minnesota 55155**

SOIL AND WATER CONSERVATION BOARD

Rules of the Cost-Share Program

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SOIL AND WATER CONSERVATION BOARD

RULES OF THE COST-SHARE PROGRAM

6 MCAR §§ 7.001-7.005

§ 7.001 Authority, scope, definitions.

A. Authority and scope. Minn. Stat. ch. 40 authorizes the State Soil and Water Conservation Board, 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. These rules 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 include in all cost-sharing contracts.

B. Definitions. For purposes of these rules, the following definitions, in addition to those in ch. 40, shall apply:

1. "Agricultural Stabilization and Conservation Service" means the U. S. Agricultural Stabilization and Conservation Service, an agency of the U. S. Department of Agriculture.

2. "Annual plan" means a plan prepared by the district according to the "Guidelines for Annual Planning" published by the State Board.

3. "Approved practice" means a soil and water conservation practice which qualifies for state cost-sharing and has been approved by the State Board.

4. "Area Conservationist" means the Area Conservationist of the U. S. D. A. Soil Conservation Service.

5. "Assigned S. C. S. personnel" means the District Conservationist or U. S. D. A.—Soil Conservation Service personnel designated by the Area Conservationist to provide need and performance certification to the program.

6. "Ch. 40" means the Minnesota Soil and Water Conservation Districts Law as established in Minn. Stat. ch. 40.

7. "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minn. Stat. § 40.07, subd. 9.

8. "District" means a Soil and Water Conservation District organized under the provisions of ch. 40.

9. "District Board" means the five supervisors of a district authorized to carry out the functions of the district under ch. 40.

10. "District Conservationist" means the District Conservationist of the USDA-Soil Conservation Service.

11. "District Cooperator" means a land occupier who has requested the assistance of a district in controlling conservation problems. Such request must be formalized by the signing of a District Cooperators Agreement provided by the State Board and approved by the District Board.

12. "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. They shall perform under the technical supervision of the District Conservationist or other assigned SCS personnel.

13. "Enduring practice" means a soil and water conservation practice which is designed for an effective life in excess of 10 years.

14. "Field Office Technical Guide" means the document providing all standards and specifications necessary for technical requirements of soil and water conservation practices as provided by the Soil Conservation Service- USDA and adopted by the District Board.

15. "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.

16. "Lake" means an enclosed basin 10 acres or more in area filled or partly filled with water and discernible on aerial photographs.

17. "Land occupier" means any 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 shall be in possession of, any lands lying within a district organized under the provisions of ch. 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.

18. "Non-production practice" means a soil and water conservation practice which is installed or applied to control soil erosion, reduce sediment yield, or protect water quality. Practices installed or applied primarily to bring land into production or to increase the short term productivity are excluded.

19. "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.

20. "Soil and water conservation practice" means those structural and vegetative practices applied to the land for the purpose of controlling soil erosion, sediment or other water pollutants.

21. "Soil Conservation Service" means the U. S. Soil Conservation Service, an agency of the U. S. Department of Agriculture.

22. "State Board" means the State Soil and Water Conservation Board as defined in ch. 40.

23. "Stream" means a well defined channel or bed that has water in it at some time of the year under normal conditions. This includes natural perennial and intermittent rivers and creeks as well as man-made channels that meet these general criteria.

§ 7.002 State Board functions.

A. Establishing approved practices and maximum rates.

1. 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 shall be contained in 6 MCAR § 7.004 and the schedule in 6 MCAR § 7.005. Changes to the list and schedule shall be made in the manner provided by the rules-making provisions of Minn. Stat. ch. 15.

2. Practices approved by the State Board must meet the following criteria:

a. Their primary purpose must be the control of soil erosion, sediment, or protection of water quality.

b. They must be enduring in nature. All practices cost-shared under this program shall be designed for a minimum effective life of 10 years.

c. They must be non-production practices.

3. The maximum cost-share rates established by the State Board represent the maximum per cent 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.

B. Allocation of funds.

1. Before the State Board can allocate cost-share funds to a district it must first approve the district's comprehensive plan.

2. Before the State Board can allocate cost-share funds to a district, it must first receive the district's annual application for cost-share funds. The application shall be made on forms provided by the State Board and received by the State Board by January 1. The application must be accompanied by the district's annual plan.

3. The State Board shall review all district applications for cost-share funds with respect to the following criteria:

a. priorities for the control of soil erosion, sediment or other water pollutants as established in the Program Plan of the State Board;

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

c. availability of cost-share funds from other sources;

d. readiness of the district to effectively utilize the funds.

4. Following review and approval, the State Board shall provide grants to the districts for the purpose of cost-sharing with land occupiers for the application of approved practices.

C. Monitoring. For the purpose of monitoring the progress of the program and utilization of funds, the State Board shall receive from each district quarterly reports by October 15, January 15, and April 15, and an annual report of the year's accomplishments by July 15. The State Board may require such additional special reports as may be deemed necessary by the State Board to monitor the cost-sharing program. The reports shall be on forms provided by the State Board.

§ 7.003 District functions.

A. Application for funds by districts. Each district shall apply for funds as indicated in 6 MCAR § 7.002 B.

B. Administration of funds.

1. Following receipt of grant funds from the State Board, the respective districts shall be responsible for administration of the funds in accordance with the provisions of ch. 40 and all other applicable laws. The District Board shall have the authority to make all decisions concerning utilization of these funds within the rules established herein.

2. As a condition to receiving grant funds from the State Board, the district shall insure compliance of the maintenance provisions of ch. 40 by monitoring all cost-share contracts made with land occupiers.

3. 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 shall not exceed the maximum rates established by the State Board. This decision shall be based on the following factors:

a. advice of technical experts familiar with the district;

b. cost-share rates currently in effect under the Agricultural Conservation Program administered by the U. S. Agricultural Stabilization and Conservation Service and other assistance programs;

c. district priorities as established in the districts' comprehensive and annual plans; and

d. cost-share funds available.

C. Application for funds by land occupiers.

1. 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 shall 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 fiscal year beginning July 1. After initial screening by the District Board, assigned S. C. S. personnel shall be responsible for making a determination of need and cost estimate. Actual determination of need may be done by the District Technician. Additional information on the desired practice which may be required by the District Board in their consideration of the application, shall be included.

2. 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 provided that all of the land occupiers are eligible as individuals and the practice or practices satisfy the criteria of the program. The land occupiers must reach agreement on the division of payments. The group spokesperson shall be identified on the application and shall file the form with the district, and shall negotiate 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.

3. If the project involves land in more than one district, application shall be made to the district containing the most land affected by the practice.

D. Criteria for District Board review.

1. The applicant must be a district co-operator.

2. The desired practice must be on the list of approved practices.

3. The primary purpose of the desired practice must be the control of soil erosion, reduction of sediment delivery, or protection 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, e.g., fencing of water impoundment structures. If the District Board determines that supplemental practices are necessary, they shall authorize cost-sharing for their installation.

4. The desired practice must be consistent with district plans and priorities.

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

6. Priority consideration shall be given to land occupiers or groups of land occupiers who demonstrate the ability to meet matching requirements.

7. The practice must comply with the specifications of the Field Office Technical Guide.

E. District approval. The District Board shall either approve or deny the application. If approved, the District Board shall instruct the chairman or acting chairman to sign the application. Once signed, the application becomes the contract between the district and land occupier and serves as the authorization for work to proceed on the practice. If 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 shall be subject to review and approval of the District Board.

F. District records. The district shall maintain a current ledger of all cost-share contracts on forms provided by the State Board. The ledger shall specify the land occupiers with whom the district has contracted, the practices involved, status of construction and a total of funds encumbered. The district shall monitor all cost-sharing contracts to insure compliance with the provisions of 6 MCAR § 7.003 B. 2. Districts having funds which are unencumbered by December 1 of each program period shall be required to return those funds to the State Board for reallocation, if the State Board has determined the funds are of significant amount and there is another district that has greater need for them.

G. Payments.

1. Construction of practices shall be monitored by the District Board to insure compliance with the specifications in the Field Office Technical Guide. Upon completion, assigned S. C. S. personnel shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of the Field Office Technical Guide. No such certification shall be made until all specifications have been satisfied. Upon certification of completion, the land occupier shall contact the district for payment and shall present all receipts for cost of the practice.

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

3. 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 agreement 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

practice units and/or estimated cost, or to postpone the completion date of the practice. Such changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share agreement covering the changes. 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 provided by the land occupier to determine the actual cost of the practice. When the district determines, that all claims are practical and reasonable, they shall authorize issuance of a check for the district share of the practice. Where the District Board determines that certain claims are not justified they 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.

H. Maintenance. The land occupier is responsible for operation and maintenance of practices applied under this program. Should the land occupier fail to maintain such practices or willfully remove them during their effective life, the land occupier shall be 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 shall not be held liable for cost-share assistance received provided the failure was caused by reasons beyond the land occupiers control, or if soil and water conservation practices are applied 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.

I. Appeals. In cases where a land occupier feels he has been treated unfairly, he may request that the District Board review its decision. Should the land occupier and District Board reach an impasse, the land occupier may petition in writing for a hearing before the State Soil and Water Conservation 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 10 days after the hearing. The referee, if 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.

J. Reports to State Board. Each district shall submit to the State Board the reports identified in 6 MCAR § 7.002.

§ 7.004 Approved practices.

A. Erosion control structures.

1. Definition: A structure such as, but not limited to, grade stabilization structures, floodwater retarding structures and multipurpose dams to (1) stabilize the grade or control head-cutting in natural or artificial channels;

(2) provide temporary storage of floodwater; (3) control release rate providing downstream channel stability; or (4) impound water.

2. Purpose: To control soil erosion and sediment. 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.

3. Applicability: To any lands where such structures are necessary for the control of soil erosion and sediment.

4. Policies:

a. Cost-sharing is authorized only on erosion control structures that provide for reduction of soil erosion or sediment pollution.

b. Cost-sharing may be authorized for the installation of livestock watering facilities in conjunction with erosion control structures only if such facilities are necessary for the proper management and protection of the structure as determined by the District Board.

c. Cost-sharing may be authorized for permanent fencing of an erosion control structure as determined by the District Board.

d. Cost-sharing may be authorized for plantings and seeding require to stabilize the structure. Whenever possible, the District Board shall encourage the use of those species that provide wildlife habitat and visual enhancement.

e. Cost-sharing may be authorized for erosion control structures which provide multiple benefits provided the primary benefit is soil erosion and sediment control.

f. Cost-sharing is authorized for erosion control dams and ponds provided that a minimum of 50% of the contributing drainage area above the proposed project is "adequately treated" or treatment is being applied.

B. Stripcropping.

1. Definition: stripcropping shall mean 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 sown, and sod crops.

2. Purpose: to establish a system of farming with contour or field stripcropping to reduce wind and water erosion and sediment pollution. Stripcropping may provide additional benefits to wildlife.

3. Applicability: to any lands where stripcropping is necessary for the control of soil erosion and sediment.

4. Policies: cost-sharing may be authorized for all costs associated with the delineation of strips and removal of obstructions.

C. Terraces.

1. Definition: an earth embankment, or a combination ridge and channel constructed across the slope at the required spacing.

2. Purpose: terraces are constructed to:

- a. reduce erosion;
- b. reduce sediment content in runoff water;
- c. intercept and conduct surface runoff at a non-erosive velocity to stable outlet;
- d. prevent gully development;
- e. reduce flooding.

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

3. Applicability: this practice applies to any lands where terraces are needed for the control of soil erosion and sediment.

4. Policies.

- a. Cost-sharing is authorized for construction necessary to properly establish the terraces including earthwork, material and seedings if necessary.
- b. Cost-sharing is authorized for tile systems necessary to the establishment and operation of the terraces, including the outlet which shall be limited to 300 feet below the last terrace in a system.

D. Diversions.

1. Definition: a channel with a supporting ridge on the lower side constructed across the slope.

2. Purpose: the purpose of this practice is to divert water away from erosive areas to sites where it can be used or disposed of safely. Diversions may provide additional benefit to wildlife.

3. Applicability: this practice applies to sites where:

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

b. surface and shallow subsurface flow is damaging sloping upland;

c. required as a part of a pollution abatement system, or to control erosion and runoff on urban or developing areas and construction sites.

4. Policies.

a. Cost-sharing is authorized for tile systems necessary for the establishment and operation of erosion control practices such as diversions.

b. Cost-sharing is authorized for construction necessary to establish the diversions including earthwork, materials and seedings necessary to properly stabilize this practice.

E. Stormwater control systems.

1. Definition: a system of components such as, but not limited to, waterways, diversions, sediment control structures, stabilization structures, culverts, channels and floodways to convey storm runoff to a constructed or natural outlet in a non-erosive manner. This practice does not apply to areas for which the primary purpose is drainage to improve crop production.

2. Purpose: the purpose of this system of elements is to provide a means of regulating and/or removing runoff to protect the area from flood damage and erosion, and to prevent pollution of watersheds, lakes and streams. Additional benefit may be provided through creation of wildlife habitat.

3. Applicability: the provisions of this system of elements to convey runoff applies to all lands by utilizing vegetative and mechanical protection for control of erosion and pollution.

4. Policies.

a. Cost-sharing is authorized for practices required in a complete stormwater control system. Such practices shall include, but are not limited to: channel lining, chutes, drop spillways, vegetative filter strips, protective outlets, sod waterways, permanent sod cover, fencing and permanent vegetation including trees, shrubs and grasses.

b. Cost-sharing is authorized for tile systems necessary for the establishment and operation of erosion control practices such as stormwater control systems.

c. Cost-sharing is authorized for seedings necessary to properly stabilize this practice.

F. Field windbreaks.

1. Definitions: a strip or belt of trees, shrubs or grass barriers established within or adjacent to a field.

2. Purpose: to reduce wind erosion. Additional benefits may be gained from: the protection of crops, livestock, and wildlife; increased moisture conservation by controlling snow deposition; and to beautify and otherwise enhance the landscape.

3. Applicability: in or around open fields which need protection against wind damage to soils. Additional benefit may be realized from the creation of wildlife habitat.

4. Policies: cost-sharing is authorized for land preparation, planting materials, planting, chemicals for weed control and other applicable costs necessary to establish the system. The land occupier shall be responsible for controlling competitive vegetation for two years following planting and shall bear the cost of control.

G. Animal waste control systems.

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

2. Purpose: agricultural waste management systems are used to manage wastes in rural areas in a manner which prevents or minimizes degradation of air, soil and water resources and protects public health and safety. Such 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.

3. Applicability.

a. To any animal confinement area, any part of which is located within 300 feet of a stream or 1,000 feet of a lake or to an animal confinement area identified as a pollution problem by the District Board, and/or Minnesota Pollution Control Agency.

b. For other requests for this practice, the District may refer the request to Minnesota Pollution Control Agency for a priority needs determination.

4. Policies.

a. Cost-sharing is authorized for all structures and vegetative practices necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage pond, and waterways. A complete system, controlling discharge of runoff from animal confinement areas to waters of the state, will be required.

b. Cost-sharing is authorized for tile systems necessary for the establishment and operation of a system.

c. Cost-sharing is authorized for seedings necessary to properly establish a system.

d. Cost-sharing is authorized for fencing necessary to protect a system.

e. Cost-sharing is prohibited on any costs normally incurred in the management of an animal confinement area. This shall include buildings, yards, pumps, tank wagons, etc.

f. Holding tanks, collection basins and other animal waste storage facilities, are eligible for cost-sharing provided the District Board determines that they are necessary to protect water quality and also provided that the entire system needed to control pollution is installed.

g. A holding tank which will become an integral part of a building is eligible for cost-sharing provided there is no other feasible alternative available for controlling pollution. The District Board, with technical review completed by technicians available to them, 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.

h. Equipment utilized in the handling or transfer of animal waste is ineligible for cost-sharing, except that animal waste conveying pipe from point of generation to the storage facility shall be eligible for cost-sharing.

H. Critical area stabilization.

1. Definition: planting vegetation such as trees, shrubs, vines, grasses or legumes on sites subject to severe erosion. (Does not include tree planting primarily for wood products.)

2. Purpose: to provide permanent vegetative cover to stabilize the soil; to protect from wind and water erosion; reduce damage from sediment and runoff to downstream areas. Additional benefit may be gained by improving wildlife habitat and the enhancement of natural beauty.

3. Applicability: on sediment producing, highly erodible or severely eroded areas (including urban areas), such as, but not limited to, dams, dikes, abandoned mine spoil, levees, channels, waterways, terrace backslopes, and denuded or gullied areas where vegetation is difficult to establish.

4. Policies.

a. Cost-sharing for stabilizing roadside, streambed and lakeshore erosion is authorized only when it is a part of a larger stabilization project.

b. Cost-sharing is authorized for seed and seeding and other associated costs necessary to stabilize the area.

§ 7.005 Cost-share rates.

A. Maximum rates. The maximum per cent of the total cost of a practice that may be funded by state cost-share funds is 75 per cent. Where state and federal monies are cost-shared on the same project, their combined amount shall not exceed 75 per cent of the total cost of the project.

B. District rates. Each district shall establish its cost-share rates as provided in 6 MCAR § 7.003 B. 2.