

CHAPTER 8400
SOIL AND WATER CONSERVATION BOARD
COST-SHARE PROGRAM

8400.0100	DEFINITIONS.	8400.2400	APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.
8400.0200	AUTHORITY.	8400.2500	APPROVED PRACTICE: FIELD WINDBREAKS.
	STATE BOARD FUNCTIONS	8400.2600	APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.
8400.0300	ESTABLISHING APPROVED PRACTICES.	8400.2700	APPROVED PRACTICE: CRITICAL AREA STABILIZATION.
8400.0400	CRITERIA FOR APPROVED PRACTICES.	8400.2705	APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND ROADSIDE STABILIZATION.
8400.0500	MAXIMUM COST-SHARE RATES.		COST-SHARE RATES
8400.0600	ALLOCATION OF FUNDS.	8400.2800	MAXIMUM RATES.
8400.0700	MONITORING.	8400.2900	DISTRICT RATES.
	DISTRICT FUNCTIONS		EXCESSIVE SOIL LOSS CONTROL
8400.0800	APPLICATION FOR FUNDS BY DISTRICTS.	8400.4000	GENERAL PROVISIONS.
8400.0900	ADMINISTRATION OF FUNDS.	8400.4002	DEFINITIONS.
8400.1000	APPLICATION FOR FUNDS BY LAND OCCUPIERS.	8400.4005	LOCAL DUTIES.
8400.1100	GROUP PROJECT.	8400.4010	SOIL AND WATER CONSERVATION DISTRICT DUTIES.
8400.1200	LAND IN MORE THAN ONE DISTRICT.	8400.4015	COMMISSIONER'S DUTIES.
8400.1300	CRITERIA FOR DISTRICT BOARD REVIEW.	8400.4025	MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS ORDINANCES.
8400.1400	DISTRICT APPROVAL.	8400.4030	PROHIBITED ACTIVITIES.
8400.1405	STARTING AND COMPLETION DEADLINES.	8400.4037	PROCEDURE FOR DEVELOPMENT ACTIVITY.
8400.1500	DISTRICT RECORDS.	8400.4040	PROCEDURE FOR AGRICULTURAL ACTIVITIES.
8400.1600	PAYMENTS.	8400.4045	COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.
8400.1700	MAINTENANCE.	8400.4050	PENALTY.
8400.1800	APPEALS.	8400.4055	HEARING PROCEDURE.
8400.1900	REPORTS TO STATE BOARD.	8400.4060	COST-SHARE FUNDS FOR A COURT ORDER.
8400.1950	VARIANCES.	8400.4065	PENALTY.
	APPROVED PRACTICES	8400.4070	ESTABLISHMENT OF COST-SHARE FUNDS.
8400.2000	APPROVED PRACTICE: EROSION CONTROL STRUCTURES.	8400.4075	VARIANCES.
8400.2100	APPROVED PRACTICE: STRIPCROPPING.	8400.4080	MODEL ORDINANCE.
8400.2200	APPROVED PRACTICE: TERRACES.		
8400.2300	APPROVED PRACTICE: DIVERSIONS.		

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 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 Soil and Water Conservation Board 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 40.03 subd 3; 40.036 subd 3*

History: *9 SR 2439*

8400.0200 AUTHORITY.

Minnesota Statutes, chapter 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. 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 40.03 subd 3; 40.036 subd 3*

History: *9 SR 2439*

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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 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

8400.0600 COST-SHARE PROGRAM

7840

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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 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
- E. cost-share funds available.

Statutory Authority: *MS s 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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.
- 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 40.03 subd 3; 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 40.03 subd 3; 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.
- 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.

MINNESOTA RULES 1987

7843

COST-SHARE PROGRAM 8400.1600

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 40.03 subd 3; 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 40.03 subd 3; 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 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3; 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 40.03; 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;

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 40.03 subd 3; 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 40.03 subd 3; 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 40.03 subd 3*

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.

MINNESOTA RULES 1987

7851

COST-SHARE PROGRAM 8400.4002

Subp. 3. Board. "Board" means the state Soil and Water Conservation Board 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*

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.

MINNESOTA RULES 1987

7857

COST-SHARE PROGRAM 8400.4060

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 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.

MINNESOTA RULES 1987

7859

COST-SHARE PROGRAM 8400.4080

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 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*