

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

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8400.0050 PURPOSE.

The land and water treatment program is administered through districts to provide financial and technical assistance to land occupiers for the application of conservation practices that reduce erosion, control sedimentation, improve and protect water quality, or address water quantity problems due to altered hydrology to ensure the sustainable use of Minnesota's natural resources.

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

History: *20 SR 2185; 37 SR 1277*

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EROSION CONTROL AND WATER MANAGEMENT PROGRAM**8400.0060 AUTHORITY.**

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

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

History: *37 SR 1277*

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8400.0100 DEFINITIONS.

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

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 [Repealed, 20 SR 2185]

Subp. 2. [Repealed, 20 SR 2185]

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 [Repealed, 37 SR 1277]

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

Subp. 4. [Repealed, 37 SR 1277]

Subp. 5. [Repealed, 20 SR 2185]

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

Subp. 6. [Repealed, 20 SR 2185]

Subp. 7. [Repealed, 9 SR 2439]

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 [Repealed, 20 SR 2185]

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

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

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

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

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

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

Subp. 10b. [Renumbered subp 8b]

Subp. 11. [Repealed, 20 SR 2185]

Subp. 12. [Repealed, 20 SR 2185]

Subp. 13. [Repealed, 20 SR 2185]

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

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

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

Subp. 15. [Repealed, 37 SR 1277]

Subp. 16. [Repealed, 37 SR 1277]

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

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

Subp. 17. [Repealed, 9 SR 2439]

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

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

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

Subp. 19. [Repealed, 20 SR 2185]

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

Subp. 20. [Repealed, 20 SR 2185]

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

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

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

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

Subp. 21. [Repealed, 20 SR 2185]

Subp. 22. [Repealed, 20 SR 2185]

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

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

Subp. 24. [Repealed, 9 SR 2439]

Subp. 25. [Repealed, 37 SR 1277]

Subp. 26. [Repealed, 37 SR 1277]

Subp. 27. [Repealed, 37 SR 1277]

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

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

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8400.0200 [Repealed, 37 SR 1277]

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8400.0250 PROGRAM POLICY.

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

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

History: *37 SR 1277*

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

Subpart 1. [Repealed, 37 SR 1277]

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

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

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

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

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

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

Subp. 3. [Repealed, 37 SR 1277]

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

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

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8400.0400 [Repealed, 20 SR 2185]

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8400.0500 MAXIMUM COST-SHARE RATES.

The maximum cost-share rates established by the state board represent the maximum percent or amount of the total cost of a conservation practice that may be funded using state cost-share funds.

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

History: *37 SR 1277*

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8400.0550 RECORDING CONSERVATION PRACTICES.

The state board may determine that long-term maintenance of a conservation practice is desirable and may require that maintenance be made a covenant upon the land for the effective life of the practice. A covenant under this part shall be construed in the same manner as a conservation restriction under Minnesota Statutes, section 84.65.

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

History: *37 SR 1277*

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8400.0600 STATE BOARD ALLOCATION OF FUNDS TO DISTRICTS.

Subpart 1. [Repealed, 37 SR 1277]

Subp. 2. [Repealed, 9 SR 2439]

Subp. 3. [Repealed, 37 SR 1277]

Subp. 4. **Grants to districts.** The state board shall allocate cost-share funds to district boards that have fully complied with Minnesota Statutes, section 103C.501, subdivision 3; all erosion control and water management program rules; and program policies.

Subp. 5. **Other funds.** Other funds received by the state board may be allocated to districts for the treatment of erosion, sedimentation, water quality problems, or water quantity problems due to altered hydrology. These additional funds may be incorporated with existing erosion control and water management program funds and their use may be governed by the program policy or may be subject to other policies or guidelines required to fully implement the intent for which these additional funds were appropriated.

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

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

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8400.0700 [Repealed, 37 SR 1277]

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DISTRICT FUNCTIONS

8400.0800 [Repealed, 37 SR 1277]

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8400.0900 DISTRICT ADMINISTRATION OF PROGRAM FUNDS.

Subpart 1. **General.** Following receipt of grant funds from the state board, a district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 103C, parts 8400.0050 to 8400.1900, program policies, and all other applicable laws. All funds allocated to districts must be used for the purposes designated by the state board.

Subp. 2. **Maximum cost-share rate.** Prior to considering any applications from land occupiers for cost-share assistance, the district board shall establish cost-share rates for conservation practices to be installed under the program, up to the maximum rates established by the state board.

Subp. 3. [Repealed, 37 SR 1277]

Subp. 4. **Criteria for district board review.** The district board shall use the factors in items A to D to determine practice eligibility and to review applications for conservation practice funding.

A. The application must be signed by the land occupier and the landowner, if different, indicating their agreement to:

(1) grant the district's representatives access to the parcel where the conservation practice will be located;

(2) obtain all permits required in conjunction with the installation and establishment of the practice prior to starting construction of the practice; and

(3) be responsible for operation and maintenance of conservation practices applied under this program according to an operation and maintenance plan prepared or approved by a district technical representative or the district's delegate.

B. Costs to repair damage to conservation practices installed with state cost-share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier.

C. If the practice has fully met or exceeded its designed effective life, the cost to reconstruct the practice is eligible for cost-share assistance.

D. Conservation practices where construction has begun prior to district approval are ineligible for financial assistance. The board may waive this requirement for emergency needs.

Subp. 5. **Entering into contract.** After review of practice eligibility, the district board, or its delegate, shall approve or deny the application. If the application is approved, the district board, or its delegate, may enter into a contract with the land occupier.

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

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

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8400.1000 [Repealed, 37 SR 1277]

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8400.1460 [Repealed, 37 SR 1277]

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8400.1500 [Repealed, 37 SR 1277]

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8400.1600 [Repealed, 37 SR 1277]

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8400.1650 RECORDING CONSERVATION PRACTICES.

When a district board, or its delegate, determines that long-term maintenance of a conservation practice is desirable, the board, or its delegate, may require that maintenance be made a covenant upon the land for the effective life of the conservation practice. A covenant under this part shall be construed in the same manner as a conservation restriction under Minnesota Statutes, section 84.65.

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

History: *20 SR 2185; 37 SR 1277*

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8400.1700 MAINTENANCE.

Subpart 1. **Land occupier maintenance responsibilities.** The land occupier is responsible for operation and maintenance of conservation practices applied under this program to ensure that their conservation objective is met and the effective life is achieved. Should the land occupier fail to maintain the conservation practices during their effective life, the land occupier is liable to the district for up to 150 percent of financial assistance received to install and establish the conservation 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 conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources.

Subp. 2. **Reapplication of conservation practices.** In no case shall a district provide cost-share assistance to a land occupier for the reapplication of conservation practices which were removed by the land occupier during their effective life or that failed due to improper maintenance.

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

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

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8400.1750 PRACTICE SITE INSPECTIONS.

The district or the district's delegate shall conduct site inspections of conservation practices installed with cost-share funds to determine if the land occupier is in compliance with the operation and maintenance requirements under part 8400.1700 and the policy, guidelines, and requirements of the state board.

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

History: *20 SR 2185; 37 SR 1277*

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8400.1800 APPEALS.

Land occupiers may appeal a district's action within 60 days of receiving notice of the action by submitting a written request to the district board asking the board to reconsider its decision. Should the land occupier and the district board reach an impasse, the land occupier may petition to appeal the district board's decision to the state board within 60 days of receiving notice of the district board's final decision. The state board or its executive director, as delegated, shall review and grant the petition, unless it is deemed without sufficient merit, within 30 days of the receipt of the petition. The state board shall make its decision on the appeal, if granted, within 60 days of a hearing date. The state board's decision may uphold, remand, reverse, or amend the decision of the district board.

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

History: *9 SR 2439; 17 SR 1279; 20 SR 2185; 37 SR 1277*

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8400.1900 REPORTS TO STATE BOARD.

For the purpose of reporting and monitoring the progress of the program and use of funds, each district shall submit an accomplishments report according to the guidelines and requirements established by the state board.

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

History: *37 SR 1277*

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8400.1950 [Repealed, 20 SR 2185]

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8400.2000 [Repealed, 20 SR 2185]

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8400.2100 [Repealed, 20 SR 2185]

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8400.2200 [Repealed, 20 SR 2185]

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8400.2300 [Repealed, 20 SR 2185]

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8400.2400 [Repealed, 20 SR 2185]

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8400.2500 [Repealed, 20 SR 2185]

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8400.2600 [Repealed, 20 SR 2185]

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8400.2700 [Repealed, 20 SR 2185]

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8400.2705 [Repealed, 20 SR 2185]

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8400.2800 [Repealed, 20 SR 2185]

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8400.2900 [Repealed, 37 SR 1277]

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EASEMENT PROGRAM

8400.3000 AUTHORITY.

Minnesota Statutes, sections 84.95, 103A.209, and 103F.501 to 103F.531, authorize the state board, in consultation with districts, private groups, and state and federal agencies, to implement a program to acquire easements on land to retire certain marginal agricultural land and protect environmentally sensitive areas to enhance soil and water quality, minimize damage to flood-prone areas, sequester carbon, and support native plant, fish, and wildlife habitats and to reestablish perennial cover and restore wetlands on that land. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the state board and district boards in implementing Minnesota Statutes, sections 103F.501 to 103F.531. The state board shall implement the reinvest in Minnesota reserve program with district boards when practical, but may also implement the program directly.

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550; 37 SR 1277*

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8400.3030 DEFINITIONS.

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

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

- A. including but not limited to tillage, planting, or harvesting operations; and
- B. devoted to the production of horticultural, row, close grown, introduced pasture, or introduced hayland crops.

Subp. 3. [Repealed, 14 SR 1928]

Subp. 3a. **Agricultural land.** "Agricultural land" means land devoted for use as pasture or hayland for domestic livestock or dairy animals, or to agricultural crop production, or to growing nursery stocks, or for use as animal feedlots, and may include contiguous land associated with these uses.

Subp. 4. **Annual plan.** "Annual plan" means a plan prepared by the district under Minnesota Statutes, section 103C.331, subdivision 11, 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 periodic change. The current version is available at the district office and state board office and is incorporated by reference.

Subp. 5. **Approved practice.** "Approved practice" means a soil and water conservation practice or wildlife habitat enhancement that may be established on an easement area and is described in the easement program practice specifications.

Subp. 6. [Repealed, 37 SR 1277]

Subp. 6a. [Repealed, 37 SR 1277]

Subp. 7. [Repealed, 14 SR 1928]

Subp. 8. [Repealed, 19 SR 550]

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

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

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

Subp. 10b. **Conservation easement program.** "Conservation easement program" refers to both the RIM reserve program, as defined in subpart 42, and the permanent wetlands preserve program, as defined in subpart 36a.

Subp. 11. **Conservation plan.** "Conservation plan" means a written description and map of the approved practices that must be applied to or that already exist on the easement area.

Subp. 11a. **Cost-shared practice.** "Cost-shared practice" means an approved practice which qualifies for cost-sharing through a conservation easement program administered by the state board.

Subp. 12. [Repealed, 19 SR 550]

Subp. 13. [Repealed, 19 SR 550]

Subp. 14. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 15. **District board.** "District board" means the board of supervisors of a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 16. [Repealed, 19 SR 550]

Subp. 17. **District technical representative.** "District technical representative" means a district employee or other designee assigned by the district who has expertise in the design and application of approved practices.

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to reduce its natural function.

Subp. 17b. **Easement program practice specifications.** "Easement program practice specifications" means the detailed descriptions of the approved practices that are allowed on lands enrolled in the conservation easement programs.

Subp. 18. [Repealed, 19 SR 550]

Subp. 19. [Repealed, 37 SR 1277]

Subp. 20. [Repealed, 37 SR 1277]

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

Subp. 20b. **Farmed wetland.** "Farmed wetland" means a wetland, as defined in subpart 48, that has been devoted to agricultural crop production, as defined in subpart 2, since December 23, 1985.

Subp. 21. [Repealed, 19 SR 550]

Subp. 22. [Repealed, 19 SR 550]

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

Subp. 24. [Repealed, 37 SR 1277]

Subp. 25. [Repealed, 37 SR 1277]

Subp. 26. [Repealed, 37 SR 1277]

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

Subp. 28. [Repealed, 37 SR 1277]

Subp. 29. **Introduced hayland.** "Introduced hayland" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by mechanical methods at least two years during the five years prior to applying for enrollment in a conservation easement program.

Subp. 30. **Introduced pasture.** "Introduced pasture" means an area devoted to the production of forage that has been cultivated in a rotation of row crops or small grains or interseeded with introduced or native species at least twice during the ten years prior to applying for enrollment in a conservation easement program. These areas must have been harvested by grazing at least two years during the five years prior to applying for enrollment in a conservation easement program.

Subp. 31. **Landowner.** "Landowner" means an individual or entity that is not prohibited from owning agricultural land under Minnesota Statutes, section 500.24, and who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 31a. **Land with crop history.** "Land with crop history" means land that has produced horticultural, row, or close grown crops or that has been enrolled at a cropland rate in a federal or state conservation program at least two of the five years prior to applying for enrollment in a conservation easement program, or land that meets the definition of introduced hayland in subpart 29, or land that meets the definition of introduced pasture in subpart 30. For the purposes of parts 8400.3000 to 8400.3930, land with crop history includes acres devoted to "set aside" or "conserving use" for the United States Department of Agriculture programs.

Subp. 32. [Repealed, 37 SR 1277]

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" means land that is:

A. composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land capability classification system of the United States Department of Agriculture; or

B. similar to land described under item A and identified under a land classification system selected by the board.

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock and land which is not considered land with crop history as defined in subpart 31a.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means land on a hillside that is used for pasture as defined in subpart 33a or used for introduced pasture as defined in subpart 30.

Subp. 34. [Repealed, 19 SR 550]

Subp. 35. [Repealed, 19 SR 550]

Subp. 36. **Perennial cover.** "Perennial cover" means the water area created by restoring a drained wetland or the perennial vegetation established under a conservation easement program, or the perennial vegetation or the water or wetland areas that already exist on the easement area.

Subp. 36a. **Permanent wetlands preserve program.** "Permanent wetlands preserve program" means the program established under Minnesota Statutes, section 103F.516.

Subp. 37. [Repealed, 19 SR 550]

Subp. 38. [Repealed, 19 SR 550]

Subp. 39. [Repealed, 19 SR 550]

Subp. 39a. **Public waters.** "Public waters" means waters as defined in Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201. A copy of the inventory is available in the district office.

Subp. 39b. **Public waters wetlands.** "Public waters wetlands" means wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 15a.

Subp. 39c. [Repealed, 37 SR 1277]

Subp. 40. [Repealed, 37 SR 1277]

Subp. 41. [Repealed, 19 SR 550]

Subp. 42. **RIM reserve program.** "RIM reserve program" means the program established in Minnesota Statutes, section 103F.515.

Subp. 42a. **Riparian land.** "Riparian land" means land adjacent to public waters, drainage systems, wetlands, or locally designated priority waters.

Subp. 43. **Screening committee.** "Screening committee" means a group established by the district board to assist in implementing the conservation easement programs. The screening committee is chaired by a district board member and is composed of representatives of private, state, and local organizations or clubs, and local, state, and federal agencies with an interest in the conservation easement programs.

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

Subp. 44. [Repealed, 37 SR 1277]

Subp. 45. **Soil and water conservation practice.** "Soil and water conservation practice" means structural or vegetative practices applied to land for the purposes of controlling soil erosion, sediment, agricultural nutrients or waste, or other water pollutants.

Subp. 46. [Repealed, 37 SR 1277]

Subp. 47. [Repealed, 14 SR 1928]

Subp. 47a. **State board.** "State board" means the Board of Water and Soil Resources.

Subp. 48. **Wetland.** "Wetland" means wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 19.

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550; L 1996 c 462 s 43; 37 SR 1277*

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8400.3060 [Repealed, 37 SR 1277]

Published Electronically: *March 7, 2013*

8400.3100 [Repealed, 19 SR 550]

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8400.3110 DURATION OF CONSERVATION EASEMENTS.

For purposes of the RIM reserve program, a conservation easement may be permanent or of limited duration. A conservation easement acquired on restorable drained wetlands, replacement wetlands, or land for highway windbreak purposes, must be of permanent duration. A conservation easement of limited duration may be acquired on other eligible land within a district if it is for a period not less than 20 years and only if the state board has approved enrollment of limited duration conservation easements in that district.

All permanent wetlands preserve program conservation easements must be of permanent duration.

Statutory Authority: *MS s 40.45; 103F.531*

History: *14 SR 1928; 19 SR 550*

Published Electronically: *March 7, 2013*

8400.3130 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

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8400.3160 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3200 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3210 DELEGATION OF PROGRAM TO ANOTHER DISTRICT.

A district board may enter into an agreement with other district boards as authorized by Minnesota Statutes, section 103C.231, to delegate to another district board the responsibility for administering any conservation easement program of the state board. Where such delegation has been mutually agreed upon,

each district board must so notify all landowners in their respective district and each district must so notify the state board.

Statutory Authority: *MS s 103F.531*

History: *19 SR 550*

Published Electronically: *March 7, 2013*

8400.3230 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3260 LAND IN MORE THAN ONE DISTRICT.

If an application involves land in more than one district, the participating districts may jointly delegate to one of the districts the responsibility for review and prioritization of that application. If that application is accepted for enrollment, the affected districts may also jointly delegate to one of the districts the responsibility for completing all of the tasks necessary for conveyance of the conservation easement to the state board.

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 19 SR 550*

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8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF APPLICATIONS.

The state board may direct districts to utilize a local screening process or committee to prioritize local project areas or applications. The criteria for screening committee prioritization are as follows:

- A. consistency with the purpose and policy of the respective conservation easement program;
- B. the parcel's potential impact on reducing soil erosion and sedimentation, improving water quality, reducing flooding, and enhancing fish and wildlife habitat;
- C. compatibility with established priorities of the organizations and agencies participating in the screening process; and
- D. highest priority must be given to permanent easements pursuant to Minnesota Statutes, section 103F.515, subdivision 2, paragraph (e).

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *13 SR 1055; 19 SR 550; 37 SR 1277*

Published Electronically: *March 7, 2013*

8400.3330 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

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8400.3360 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3390 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall direct its staff or the district technical representative to develop conservation agreements as prescribed by the state board and in a recordable form for all approved applications which incorporate the minimum requirements stated in Minnesota Statutes, section 103F.515, subdivisions 4 and 5. In addition, each conservation agreement must require the landowner to:

- A. pay, when due, all taxes and assessments that may be levied against the easement area;
- B. remove any existing structures as required by the district board or the state board prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place, erect, or construct any temporary or permanent structures on the easement area;
- C. remove any existing hazardous and toxic substances or any pollutants and contaminants prior to the conveyance of the conservation easement with all associated costs being the responsibility of the landowner, and not place such substances, pollutants, or contaminants on the easement area;
- D. properly seal all abandoned wells on the easement area prior to the conveyance of the conservation easement, with all associated costs being the responsibility of the landowner; and
- E. allow the state board and its employees and agents to enter the easement area for the purposes of inspection and enforcement of the terms and conditions of the conservation easement.

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Published Electronically: *March 7, 2013*

8400.3430 [Repealed, 19 SR 550]

Published Electronically: *March 7, 2013*

8400.3460 TITLE REQUIREMENTS.

The landowner must have good and marketable title that is insurable under a title insurance policy. In addition, the title must not be subject to any prior liens or encumbrances determined to be objectionable by the Attorney General. Objectionable title defects, liens, or encumbrances must be promptly removed or corrected by the landowner prior to easement conveyance.

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Published Electronically: *March 7, 2013*

8400.3500 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3530 Subpart 1. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

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

Subp. 2a. [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

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

Subp. 4. [Repealed, 19 SR 550, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3560 [Repealed, L 2009 c 172 art 2 s 32; c 176 art 1 s 52]

Published Electronically: *March 7, 2013*

8400.3600 RENEWAL AND EXTENSION OF CONSERVATION EASEMENTS.

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

B. The easement duration may be lengthened through mutual agreement of the current landowner with the state board, in consultation with the commissioners of agriculture and natural resources, if the state board determines that the changes are consistent with the purpose of the conservation easement program. When converting limited duration easements to permanent easements, the payment is the difference between the amount that would be paid per acre for the permanent easement as established for the most recent sign-up period and the amount already paid for the limited duration easement on the area.

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Published Electronically: *March 7, 2013*

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION EASEMENTS.

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

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

A. a copy of the letter from the landowner to the district board justifying the change and identifying how the public interest and general welfare will be better served;

B. a letter from the district board recommending either approval or disapproval of the proposed change;

C. a letter from the Department of Natural Resources recommending either approval or disapproval of the proposed change; and

D. other supporting documents, including:

- (1) an aerial photo identifying the requested change;
- (2) a soil survey map of the area;
- (3) cropping history information; and
- (4) other pertinent documentation that will support the request.

The state board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The state board must be compensated by the landowner for all damages and loss of benefits to the conservation easement and the state board may also require reimbursement for administrative expenses and costs incurred in the alteration, release, or termination of a conservation easement.

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *14 SR 1928; 19 SR 550; 37 SR 1277*

Published Electronically: *March 7, 2013*

8400.3630 APPROVED PRACTICES.

Subpart 1. **Criteria.** Approved practices must have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, reduction of flooding, or enhancement of fish and wildlife habitat. Approved practices may be further specified in the easement program policies or practice specifications. Practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for conservation easement program cost-sharing, but are considered an approved practice and, therefore, are allowed on enrolled acres as specified in the easement conservation plan.

Subp. 2. **Establishment of approved practices.** A landowner is responsible for the establishment of all approved practices on the easement area in accordance with the easement program practice specifications. Establishment of approved practices must be monitored by the district board or its delegate to ensure compliance with the conservation plan and the conservation easement. Upon establishment or partial completion of an approved practice, a district technical representative shall certify whether or not the approved practice, in whole or part, has been satisfactorily performed.

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550; 37 SR 1277*

Published Electronically: *March 7, 2013*

8400.3660 [Repealed, 19 SR 550]

Published Electronically: *March 7, 2013*

8400.3700 COST-SHARED PRACTICES.

Subpart 1. **Approved practices eligible for cost-sharing.** The state board shall determine which approved practices are eligible for conservation easement program cost-sharing, consistent with the criteria as described in part 8400.3630, subpart 1.

Subp. 2. Eligible costs for cost-shared practices.

A. Upon satisfactory performance under part 8400.3630, subpart 2, the landowner shall present receipts or invoices to the district board, or its delegate, of the costs incurred in the installation of the cost-shared practice. The district board shall review the receipts or invoices to determine the costs eligible for conservation easement program payment. If the district board determines that the costs requested for reimbursement are reasonable and necessary, it shall recommend payment to the landowner by submitting certification of satisfactory performance and providing documentation of reimbursable practice costs to the state board on forms provided by the state board. If the district board determines that certain costs requested for reimbursement are not eligible or reasonable, it shall notify the landowner in writing of this determination. The landowner may request reconsideration of this determination by the district board within 30 days of receipt of the determination. If additional costs are determined to be eligible and reasonable, the district board shall then recommend payment for the approved amount. The state board reserves the right to approve whether costs requested for reimbursement are eligible and reasonable.

B. Eligible costs for approved practices are limited to those prescribed by the state board as allowed in Minnesota Statutes, section 103F.515, subdivision 6.

C. The state board reserves the right to approve and provide funding for cost-shared practices.

Subp. 3. Payment for in-kind services. In-kind services provided by the landowner including, but not limited to, earthwork, seedbed preparation, and seeding, may be credited to the landowner's share of the total cost of establishing the cost-shared practice. The district board shall credit only those costs it determines to be practical and reasonable and may approve receipts or invoices directly or through its delegate.

Subp. 4. Funds from other sources. Conservation easement program cost-sharing funds may be augmented by funds from other agencies, organizations, or individuals.

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550; 37 SR 1277*

Published Electronically: *March 7, 2013*

8400.3730 FAILURE OF APPROVED PRACTICES.

Subpart 1. Cost-shared practices. A landowner is not in violation of the conservation easement if the failure, in whole or part, of a cost-shared practice was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the state board that conservation easement program cost-sharing funds be encumbered for reestablishment of the cost-shared practice. The encumbrance must comply with the limits prescribed by the state board. In no case may a district board authorize conservation easement program financial assistance to a landowner for the reestablishment of cost-shared practices that were removed or altered by the landowner, or that have failed due to improper maintenance during the term of the conservation easement.

Subp. 2. All other approved practices. A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control.

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550; 37 SR 1277*

Published Electronically: *March 7, 2013*

8400.3760 [Repealed, 14 SR 1928; 19 SR 550]

Published Electronically: *March 7, 2013*

8400.3800 OPERATION AND MAINTENANCE.

A landowner is responsible for the operation and maintenance of approved practices designated in the conservation plan.

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 19 SR 550*

Published Electronically: *March 7, 2013*

8400.3830 VIOLATIONS AND ENFORCEMENT.

Subpart 1. **District board action.** The district board may take such measures as are necessary to ensure landowner compliance with the conservation agreement, conservation easement, and conservation plan. If the district board is unsuccessful at obtaining landowner compliance, the district board shall notify the state board of the violation and may recommend appropriate measures to be taken to correct violations.

Subp. 2. **State board action.** Upon notification or discovery of a violation of a conservation agreement, conservation easement, or conservation plan, the state board shall take action to resolve the violation.

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

If the state board is not successful in resolving the violation, it may request the state attorney general to commence legal action to enforce the conservation agreement, conservation easement, or conservation plan.

Subp. 3. **Attorney general action.** Upon request by the state board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 103F.501 to 103F.531 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

Conservation easements remain in effect even if maintenance violations have occurred.

Statutory Authority: *MS s 40.45; 103C.501; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550; 37 SR 1277*

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8400.3860 [Repealed, 19 SR 550]

Published Electronically: *March 7, 2013*

8400.3870 [Repealed, 37 SR 1277]

Published Electronically: *March 7, 2013*

8400.3900 [Repealed, 19 SR 550]

Published Electronically: *March 7, 2013*

8400.3930 RECONSIDERATION AND APPEAL.

Subpart 1. **Reconsideration by district board.** An affected landowner may request the district board to reconsider its:

- A. recommendation or determination regarding that landowner's application for enrollment in a conservation easement program;
- B. recommendation or determination to cancel that landowner's conservation agreement;
- C. determination regarding that landowner's eligible and allowable costs to be reimbursed by the state board;
- D. request to that landowner to correct any alleged noncompliant conditions regarding that landowner's enrolled easement area; or
- E. recommendation to disapprove that landowner's request to change an enrolled easement area.

Subp. 2. **Time for reconsideration by district board.** A landowner requesting reconsideration under subpart 1 shall mail a written request to the district board within 15 days of receipt of notice of the district board's determination or recommendation of the matters specified in subpart 1. The request for reconsideration shall include the specific reasons for the request and evidence to support the landowner's claims. The district board shall notify the landowner in writing of its final recommendation and the reasons for the recommendation within 60 days of receipt of the landowner's request for reconsideration.

Subp. 3. **Appeal to state board.** An affected landowner may appeal to the state board from a final recommendation made by the district board pursuant to subpart 2. The landowner shall mail a written appeal to the state board within 15 days after receipt of the district board's final recommendation. The appeal shall include the specific reasons for the request and evidence to support the landowner's claims. The state board shall notify in writing the landowner and the district board of its final decision and the reasons for the decision within 60 days of receipt of the landowner's appeal.

Subp. 4. [Repealed, 14 SR 1928]

Statutory Authority: *MS s 40.45; 103F.531*

History: *13 SR 1055; 14 SR 1928; 19 SR 550*

Published Electronically: *March 7, 2013*

EXCESSIVE SOIL LOSS CONTROL

8400.4000 GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 8400.4000 to 8400.4080 is to reduce the amount of soil erosion on Minnesota land. The benefits of the local adoption of parts 8400.4000 to 8400.4080 include

decreasing the amount of off-site damages from sediment, retaining the productivity of the soil, and improving water quality.

Subp. 2. **Policy.** Parts 8400.4000 to 8400.4080 are adopted in accordance with Minnesota Statutes, sections 103F.401 to 103F.455 and apply to all activities which cause excessive soil loss.

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

Subp. 4. **Voluntary adoption.** A local government of a county, home rule charter or statutory city, or town with the authority to adopt and administer an ordinance may choose to adopt and administer soil loss limits. Parts 8400.4000 to 8400.4080 are only applicable if the local government adopts a soil loss limits ordinance under Minnesota Statutes, sections 103F.401 to 103F.455.

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

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

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4002 DEFINITIONS.

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

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

Subp. 3. **Board.** "Board" means the state Board of Water and Soil Resources created under Minnesota Statutes, section 103B.101.

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

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

Subp. 6. **Conservation practice.** "Conservation practice" means a practice containing a definition, purpose, conditions under which the practice is applied including design requirements, and specifications containing a statement of details required for installing a conservation practice, including necessary kinds, quality, and quantity of work and materials. A conservation practice may be a permanent or temporary, vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion and sedimentation. "Conservation practices" may be used in a development activity area or an agricultural area. Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization

structures, sediment retention structures, strip-cropping, water and sediment control basins, and other permanent practices approved by the board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, fabric filter barriers, filter strips, storm water inlet and outlet protection, and any other cultural practices approved by the board. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

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

Subp. 8. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

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

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

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

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

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

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

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

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

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

Subp. 18. **Soil loss limits.** "Soil loss limits" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. The local soil loss limits ordinance must use the soil loss tolerance for each soil series described in the Field

Office Technical Guide or the United States Department of Agriculture Natural Resources Conservation Service Soil Survey for a particular county, whichever is more current.

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

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

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

Published Electronically: *September 30, 2015*

8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, a local government may adopt soil loss limits which meet the minimum standards and criteria for soil loss, and once adopted shall administer and enforce the soil loss limits ordinance.

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

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 103F.401 to 103F.455, districts shall:

- A. provide assistance to local governments in determining whether excessive soil loss is occurring;
- B. provide assistance to the land occupiers in developing a conservation plan and time schedule suggesting conservation practices and a time schedule for their application;
- C. make available to land occupiers state cost-share funds as provided by parts 8400.4045 and 8400.4060;
- D. provide assistance to local governments in the development, review, monitoring, and enforcement of local soil loss limits ordinances, conservation plans, and time schedules, and sedimentation control plans and time schedules; and
- E. provide assistance to the commissioner in the development and review of additional adequate technical information.

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

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4015 COMMISSIONER'S DUTIES.

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

- A. establish statewide standards reviewed every five years, for the management of land to prevent excessive soil loss from occurring;
- B. upon request, assist the local government in the drafting of a soil loss limits ordinance which meets the provisions of Minnesota Statutes, sections 103F.401 to 103F.455 and parts 8400.4000 to 8400.4080 which assistance includes, but is not limited to, creation of specific guidelines to be used locally in the formulation of reasonable regulations and other conservation practices based on sound technical data and consistent with statewide standards and community land use needs;
- C. where sufficient information is not available, cooperate to the fullest extent with appropriate federal, state, and local governments in securing adequate technical information;
- D. periodically review and upgrade soil loss limits criteria based on new technical methodologies;
- E. disseminate to the local government, whenever available, technical information including information of federal, state, and local programs, educational materials and other material useful in carrying out a soil loss limits program; and
- F. coordinate federal, state, and local soil loss limits activities in the state.

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

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

Published Electronically: *August 4, 2014*

8400.4025 MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS ORDINANCES.

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

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

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

- A. stabilization of denuded areas and soil stockpiles;
- B. establishment of permanent vegetation;
- C. protection of adjacent properties;
- D. timing and stabilization of sediment trapping measures;

- E. sediment basins;
- F. stabilization of cut and fill slopes;
- G. stabilization of watercourses;
- H. stabilization of construction access routes;
- I. disposition of all temporary measures; and
- J. maintenance of all temporary and permanent urban conservation practices.

Subp. 4. **Model ordinances.** The model ordinances incorporated by reference in part 8400.4080 are the minimum standards for the adoption or amendment of soil loss limits under Minnesota Statutes, sections 103F.401 to 103F.455. A local government may adopt soil loss limits which are stricter than the model ordinances.

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

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4030 PROHIBITED ACTIVITIES.

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

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

- A. if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;
- B. if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths;
- C. if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss; and
- D. if a body of water, watercourse, or wetland is located within an agricultural use area, wooded or open land used for pasture, or a wooded area used for timber harvest, ensure that proper management and conservation practices are being applied to the surrounding land.

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

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

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4037 PROCEDURE FOR DEVELOPMENT ACTIVITY.

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4040 PROCEDURE FOR AGRICULTURAL ACTIVITIES.

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

The signed written complaint must include:

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

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

The notice must:

- A. be given ten days prior to the date of the inspection;
- B. be delivered either by personal service or certified mail; and
- C. if the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.

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

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

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

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

- A. describe the land and state the extent to which soil loss exceeds the soil loss limits;
- B. be delivered within ten days of the local government's decision;
- C. be delivered either by personal service or by certified mail; and
- D. state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

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

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

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4045 COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.

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

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

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4050 PENALTY.

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

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4055 HEARING PROCEDURE.

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

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

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4060 COST-SHARE FUNDS FOR A COURT ORDER.

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

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

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

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

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4065 PENALTY.

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4070 ESTABLISHMENT OF COST-SHARE FUNDS.

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

The priority cost-share assistance contract, prepared by the Board of Water and Soil Resources, is incorporated by reference. This document is subject to frequent change and is available at the State Law Library.

Statutory Authority: *MS s 40.21*

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

Published Electronically: *August 4, 2014*

8400.4075 VARIANCES.

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

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

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

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

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

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

Subp. 3. **Decision.** Local government variance requests must be submitted to the board at least 30 days prior to the board meeting at which the variance is to be considered. Within 45 days after the meeting,

the board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance may not be granted if it is in conflict with any statute.

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

Statutory Authority: *MS s 40.21*

History: *11 SR 742*

Published Electronically: *March 7, 2013*

8400.4080 MODEL ORDINANCE.

The model ordinance, prepared by the Board of Water and Soil Resources, in consultation with counties, districts, and other appropriate agencies, pursuant to Minnesota Statutes, section 103F.411, subdivision 1, is incorporated by reference. That document may be subject to change and is available at the State Law Library.

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

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

Published Electronically: *August 4, 2014*