

1 Department of Agriculture
2 Planning Division
3 Soil and Water Conservation Board
4
5 Adopted Amendments to the Soil and Water Conservation Board's
6 Cost Share
7
8 Rules as Adopted

9 8400.0100 DEFINITIONS.

10 Subpart 1. Scope. For purposes of parts 8400.0100 to
11 8400.2900, the definitions in this part, in addition to those in
12 Minnesota Statutes, chapter 40, apply.

13 Subp. 1a. Adequately protected. "Adequately protected"
14 means that soil erosion and other factors that influence the
15 sustained productive use of the resource base are within
16 acceptable limits, which are achieved through the use of soil
17 and water conservation practices. With respect to soil erosion,
18 the loss may not exceed "T."

19 Subp. 2. [Unchanged.]

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

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

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

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

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 Subp. 7. [See Repealer.]

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

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

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

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

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

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

36 Subp. 12. District cooperator. "District cooperator"

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 means a land occupier who has requested the assistance of a
2 district in controlling conservation problems. The request must
3 be formalized by the signing of a district cooperator's
4 agreement provided by the state board and approved by the
5 district board.

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

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

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

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

27 Subp. 16. [Unchanged.]

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

1 than 2 x T tons per acre per year are classified as secondary
2 priority.

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

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

18 "High priority sedimentation problems" means areas within
19 300 feet of a water course or 1,000 feet of a water basin or
20 wetland where the water erosion rate exceeds three tons per acre
21 per year or areas where the districts can show that sediment
22 delivery occurs from a watershed or direct conveyance structure
23 such as a storm sewer or paved outlet channel discharging to
24 these waters. The water basin, wetland, or water course must be
25 classified by the Department of Natural Resources as a protected
26 water. Sedimentation problems not meeting these criteria are
27 not eligible for cost-sharing assistance.

28 Subp. 17. [See Repealer.]

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

1 definition also includes the federal government.

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

8 Subp. 20. [Unchanged.]

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

15 Subp. 20b. Registered professional engineer. "Registered
16 professional engineer" means a person who practices professional
17 engineering within the meaning of Minnesota Statutes, sections
18 326.02 to 326.15, and who performs technical professional
19 services such as, but not limited to, the planning, designing,
20 or inspecting of the construction of erosion, sediment control,
21 or water quality protection or improvement measures. A
22 registered professional engineer may be designated by a district
23 board and may use criteria in a recognized technical procedure
24 to design, install, and certify practices which qualify for
25 state cost-sharing.

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

35 Subp. 20d. Sinkhole. "Sinkhole" means a depression or
36 hole in the earth's surface caused by dissolving of underlying

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 limestone; drainage is through joints and fractures in
2 underlying bedrock.

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

8 Subp. 22. [Unchanged.]

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

20 Subp. 23. State board. "State board" means the state Soil
21 and Water Conservation Board created in Minnesota Statutes,
22 section 40.03.

23 Subp. 24. [See Repealer.]

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

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

33 8400.0200 AUTHORITY.

34 Minnesota Statutes, chapter 40, authorizes the state Soil
35 and Water Conservation Board, in cooperation with the soil and
36 water conservation districts, to administer a program of

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 cost-sharing with land occupiers on the installation of soil and
2 water conservation practices. Parts 8400.0100 to 8400.2900
3 provide procedures and criteria to be followed by the state
4 board in allocating cost-sharing funds to districts, and
5 standards and guidelines which the district boards shall use in
6 allocating funds to land occupiers.

7 8400.0300 ESTABLISHING APPROVED PRACTICES.

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

14 8400.0400 CRITERIA FOR APPROVED PRACTICES.

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

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

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

23 C. They must be nonproduction practices.

24 8400.0600 ALLOCATION OF FUNDS.

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

31 Subp. 2. [See Repealer.]

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

35 A. the extent of high priority erosion or water

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 quality problems in the district as outlined in the district
2 comprehensive and annual plans;

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

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

8 D. availability of cost-share funds from other
9 sources; and

10 E. readiness of the district to effectively use the
11 funds.

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

18 Subp. 4. Grants. Following review and approval of the
19 annual and comprehensive plans, the state board shall allocate
20 to districts in the form of grants at least 70 percent of the
21 cost-sharing funds available statewide for conservation
22 practices to address high priority erosion or water quality
23 problems. ~~At least 50 percent of the cost-sharing funds~~
24 ~~available statewide must be allocated for conservation practices~~
25 ~~to control high priority erosion problems. Up to 20 percent of~~
26 ~~the cost-sharing funds available statewide may be used to~~
27 ~~control high priority water quality problems.~~ The remaining
28 cost-share funds may be allocated by the board to districts for
29 technical and administrative assistance or special projects.
30 ~~Technical and administrative assistance grants shall be based on~~
31 ~~the extent of high priority erosion and water quality problems~~
32 ~~in each district and the demonstrated interest of the district~~
33 ~~in identifying and addressing those problems.~~ Technical and
34 administrative assistance grants may be used for controlling
35 secondary priority nonshoreland erosion problems.

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

8 8400.0900 ADMINISTRATION OF FUNDS.

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

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

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

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

28 B. advice of technical experts familiar with the
 29 district;

30 C. cost-share rates currently in effect under the
 31 agricultural conservation program administered by the United
 32 States Agricultural Stabilization and Conservation Service and
 33 other assistance programs;

34 D. district priorities as established in the
 35 districts' comprehensive and annual plans; and

36 E. cost-share funds available.

APPROVED IN THE
 REVISOR OF STATUTES
 OFFICE BY:

1 8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.

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

18 8400.1100 GROUP PROJECT.

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

31 8400.1200 LAND IN MORE THAN ONE DISTRICT.

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

APPROVED IN THE
 REVISOR OF STATUTES
 OFFICE BY:

1 8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW.

2 Criteria for district board review:

3 A. The applicant must be a district cooperator.

4 B. The practice needed to solve the problem must be
5 on the list of approved practices.

6 C. The primary purpose of the requested practice must
7 be the control of soil erosion or sedimentation, or the
8 protection or improvement of water quality. In cases where the
9 primary purpose is questionable, the district board shall make a
10 determination of the acceptability of the application.

11 Additionally, the district board shall make determination of the
12 need for supplemental practices to protect any practice
13 installed under this program, such as fencing of water
14 impoundment structures. If the district board determines that
15 supplemental practices are necessary, it shall authorize
16 cost-sharing for their installation.

17 D. The requested practice must be consistent with
18 district plans and priorities.

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

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

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

32 8400.1400 DISTRICT APPROVAL.

33 Subpart 1. General. After completion of a priority
34 determination and cost estimate, the district board shall either
35 approve or deny the application. If it is approved, the
36 district board shall instruct the chairman or acting chairman to

1 sign the application. Once it is signed, the application
 2 becomes the contract between the district and land occupier and
 3 serves as the authorization for work to proceed on the
 4 practice. Practices begun prior to district approval are
 5 ineligible for financial assistance. If it is denied, the
 6 district board shall notify the land occupier in writing within
 7 30 days after board action of the reason for denial of the
 8 application. Changes in any provisions of the contract are
 9 subject to review and approval by the district board.

10 Subp. 2. High priority problems. In order to ensure
 11 compliance with part 8400.0600, subpart 4, the district board
 12 shall approve only those applications that involve the high
 13 priority problems for which they received funds. ~~The district~~
 14 ~~board may allocate high priority water quality funds for high~~
 15 ~~priority erosion projects, but not the converse.~~

16 8400.1405 STARTING AND COMPLETION DEADLINES.

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

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

31 A. The anticipated completion date will be in
 32 compliance with subpart 1.

33 B. The completed work meets the requirements of part
 34 8400.1300, item G.

35 C. The state board's authorized representative must
 36 review the work and concur in the payment decision.

APPROVED IN THE
 REVISOR OF STATUTES
 OFFICE BY:

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

4 A. Payment percentages must comply with part
5 8400.2800.

6 B. The balance of the project must be paid by the
7 district board upon the satisfactory completion of the total
8 project.

9 C. All expenses incurred in correcting damage caused
10 to the project by virtue of its incompleteness must be borne by
11 the land occupier.

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

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

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

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

26 8400.1500 DISTRICT RECORDS.

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

32 8400.1600 PAYMENTS.

33 Subpart 1. Construction of practice. Construction of
34 practices must be monitored by the district board to ensure
35 compliance with part 8400.1300, item G. Upon completion,

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 assigned Soil Conservation Service personnel or a registered
2 professional engineer shall certify whether or not the practice
3 has been satisfactorily performed, including a certification
4 that the practice meets the requirements of part 8400.1300, item
5 G. No certification shall be made until all specifications have
6 been satisfied. Exceptions must be in accordance with part
7 8400.1405, subpart 2. Upon certification of completion, the
8 land occupier shall contact the district for payment and shall
9 present documentation of all costs incurred in the installation
10 of the practice in the form of receipts or invoices.

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

17 Subp. 3. Actual cost differing from estimated cost. In
18 cases where the actual cost of the practice exceeds the
19 estimated cost, the district may only share the approved
20 percentage of the estimated cost, except when an amendment to
21 the cost-share contract has been approved. Because of extreme
22 circumstances such as, but not limited to, weather and
23 unforeseen geologic conditions, it may be desirable to increase
24 the estimated cost, or postpone the starting or completion date
25 of the practice. These changes must be approved by the
26 supervisors in advance of completion of the work with an
27 amendment to the cost-share contract covering the changes.
28 Amendments may not be authorized for providing final
29 cost-sharing percentages in excess of the originally approved
30 percentage or additional money for projects that were knowingly
31 underfunded at the time of approval. Amendments may not be
32 authorized after final approval of payment has been made on the
33 original contract. Where the actual cost is less than the
34 estimated cost, the district shall only share the approved
35 percentage of the actual cost of the practice. The district
36 board shall review the receipts or invoices provided by the land

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 occupier to determine the actual cost of the practice. When the
2 district determines that all claims are practical and
3 reasonable, it shall authorize issuance of a check for the
4 district share of the practice. If the district board
5 determines that certain claims are not justified, it shall
6 notify the land occupier in writing of the unjustified claims
7 within 30 days. The district board shall then authorize the
8 issuance of a check for the district share of the justified
9 claims.

10 8400.1700 MAINTENANCE.

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

29 8400.1800 APPEALS.

30 If a land occupier feels he has been treated unfairly, he
31 may request that the district board review its decision. Should
32 the land occupier and the district board reach an impasse, the
33 land occupier may petition in writing for a hearing before the
34 state board. If it grants the hearing, which shall be informal,
35 the state board or a referee appointed by it shall hear all

1 testimony offered, and shall accept written testimony for ten
2 days after the hearing. The referee, if one is used, shall
3 report his findings and recommendation to the state board, which
4 shall within 60 days of the hearing date make its decision on
5 the appeal, upholding, reversing, or amending the decision of
6 the district board.

7 8400.1950 VARIANCES.

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

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

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

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

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

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

33 If a variance has been granted by the state board, the
34 district board holding the variance may file with the state
35 board at any time a written request for modification or
36 amendment of the variance. The request for modification or

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 amendment, and the state board's consideration of the request,
2 shall comply with requirements of this part.

3 8400.2000 APPROVED PRACTICE: EROSION CONTROL STRUCTURES.

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

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

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

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

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

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

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

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

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

36 F. for temporary materials and seedings necessary to

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 properly stabilize an erosion control structure during
2 construction; and

3 G. for erosion control dams and ponds if a minimum of
4 50 percent of the contributing drainage area above the proposed
5 project is adequately protected.

6 8400.2100 APPROVED PRACTICE: STRIPCROPPING.

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

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

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

20 Subp. 4. Policies. Cost-sharing is authorized for a-per
21 ~~acre-rate-not-to-exceed-\$11-whether-solely-state-cost-shared-or~~
22 ~~in-combination-with-federal-cost-sharing~~ equipment and labor
23 costs involved in the marking of individual strip lines.
24 Equipment and labor costs must not exceed equivalent total costs
25 as listed in "Custom Rate Estimates for Minnesota," published
26 annually by the University of Minnesota Agricultural Extension
27 Service, and available in county agricultural extension
28 offices. That publication is adopted by reference.

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

31 8400.2200 APPROVED PRACTICE: TERRACES.

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

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

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

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

8 Terraces may provide additional benefits by creating

9 wildlife habitat and retaining runoff for moisture conservation.

10 Subp. 3. Applicability. Terraces may be used on any lands

11 where they are needed for the control of soil erosion or water

12 quality protection or improvement.

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

14 A. for construction necessary to properly establish

15 terraces, including earthwork, material, and seedings if

16 necessary;

17 B. for temporary materials and seedings necessary to

18 properly stabilize terraces during construction; and

19 C. for tile systems necessary for the establishment

20 and operation of the terraces, including the outlet which shall

21 be limited to 300 feet below the last terrace in a system.

22 8400.2300 APPROVED PRACTICE: DIVERSIONS.

23 Subpart 1. Definition. "Diversion" means a channel with a

24 supporting ridge on the lower side constructed across the slope.

25 Subp. 2. Purpose. The purpose of a diversion is to divert

26 water away from erosive areas or areas that pose a threat to

27 water quality to areas where it can be used or disposed of

28 safely. Diversions may provide additional benefit to wildlife.

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

30 A. runoff from higher lying areas is eroding

31 cropland, pastureland, or farmsteads, or is needed to support

32 conservation practices such as terraces or stripcropping in the

33 control of erosion or sedimentation;

34 B. surface and shallow subsurface flow is damaging

35 sloping upland or contaminating ground or surface water; or

36 C. it is required as a part of a pollution abatement

1 system, or to control erosion or sedimentation on urban or
2 developing areas and construction sites.

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

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

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

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

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

12 8400.2400 APPROVED PRACTICE: STORMWATER CONTROL SYSTEMS.

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

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

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

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

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

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 adequately protected.

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

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

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

11 8400.2500 APPROVED PRACTICE: FIELD WINDBREAKS.

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

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

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

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

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

34 8400.2600 APPROVED PRACTICE: ANIMAL WASTE CONTROL SYSTEMS.

35 Subpart 1. Definition. "Animal waste control system"

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

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

14 Subp. 3. Applicability. Animal waste control systems may
15 be used ~~in any animal confinement area for which the feedlot~~
16 ~~evaluation model has been applied and a potential pollution~~
17 ~~hazard has been determined to exist~~ with any high priority
18 feedlot or where the land occupier was cited by the Minnesota
19 Pollution Control Agency or other situations where that agency
20 determines there is a potential feedlot pollution hazard.

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

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

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

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

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

35 Cost-sharing is prohibited on any costs normally incurred
36 in the management of an animal confinement area. This includes

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 buildings, yards, permanent or portable pumps, tank wagons,
2 loaders, stackers, and similar items.

3 Holding tanks, collection basins, waste conveying pipe, and
4 other animal waste facilities are eligible for cost-sharing if
5 the district board determines that they are necessary to protect
6 water quality and if the entire system needed to control
7 pollution is installed.

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

18 8400.2700 APPROVED PRACTICE: CRITICAL AREA STABILIZATION.

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

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

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

35 Subp. 4. Policies. Cost-sharing for stabilizing
36 streambank, lakeshore, and roadside areas must be addressed with

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 the approved practice in part 8400.2705.

2 Cost-sharing is authorized for:

3 A. earthwork, materials, seed, and seedings and other
4 associated costs necessary to stabilize the area;

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

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

9 8400.2705 APPROVED PRACTICE: STREAMBANK, LAKESHORE, AND
10 ROADSIDE STABILIZATION.

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

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

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

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

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

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

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

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

34 Subp. 5. Cost-sharing limit. Cost-sharing may not exceed
35 50 percent of total eligible project costs.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

1 8400.2800 MAXIMUM RATES.

2 The maximum percent of the total cost of a practice
3 installed to control a high priority erosion or water quality
4 problem that may be funded by state cost-share funds is 75
5 percent except ~~where-a-flat-rate-is-authorized~~ as stated in part
6 8400.2100, subpart 4. The maximum percent of the total cost of
7 a practice installed to control a secondary priority
8 nonshoreland erosion problem that may be funded by state
9 cost-share funds is 50 percent except ~~where-a-flat-rate-is~~
10 authorized as stated in part 8400.2100, subpart 4. State
11 cost-share funds may be matched with federal money or other
12 state funds except as stated in part 8400.2100, subpart 4. The
13 combined state and federal amount may not exceed the maximum
14 rates in this part or part 8400.2705, subpart 5.

15

16 REPEALER. Minnesota Rules, parts 8400.0100, subparts 7, 17, and
17 24; and 8400.0600, subpart 2 are repealed.

18

19 EFFECTIVE DATE. These rules are effective July 1, 1985.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY: