

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

COST SHARE PROGRAM
EMERGENCY RULES

Please take notice that the State Soil and Water Conservation Board, at its meeting on October 11, 1977, approved for promulgation the emergency rules printed following this notice. The rules are authorized by Laws of Minnesota 1977, Chapter 304, Section 9, Subdivision 3.

For twenty (20) days after the date of publication of this notice in the State Register, the Board will accept data and views submitted in writing to

State Soil & Water Conservation Board
3rd Floor Centennial Building
St. Paul, MN 55155
Attn: Greg Larson

After the twenty (20) days the rule, together with any changes the Board proposes as a result of the comments received, will be submitted to the Attorney General. The rule will become effective five (5) working days after submission unless within such time the Attorney General disapproves the rule as to either form or legality.

Dated Oct. 28, 1977

Soil and Water Conservation Board

Vernon F. Reinert
Executive Director

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

COST-SHARE PROGRAM

EMERGENCY RULES

SWC 1. Authority, Scope, Definitions.

A. AUTHORITY AND SCOPE

Minnesota Statutes 1976, Chapter 40, as amended by Laws of Minnesota 1977, Chapter 304, authorizes the State Soil and Water Conservation Board, in cooperation with the Soil and Water Conservation Districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. These rules provide procedures and criteria to be followed by the State Board in allocating cost-sharing funds to districts, and standards and guidelines which the District Boards shall include in all cost-sharing contracts prior to the passage of permanent rules and regulations.

B. DEFINITIONS

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

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

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

4. "Chapter 40" means the Minnesota Soil and Water Conservation Districts Law as established in Minnesota Statutes, Chapter 40.

5. "District" means a Soil and Water Conservation District organized under the provisions of Chapter 40.

6. "District Board" means the five supervisors of a District authorized to carry out the functions of the District under Chapter 40.

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

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

9. "District Technician" means a district employee or county employee assigned to the district who possesses expertise in the design and application of soil and water conservation practices. They shall perform under the technical supervision of the District Conservationist.

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

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

12. "Group Spokesman" means an individual selected by the several individuals involved in a group project, who may speak for the entire group in negotiations with a district for cost-share assistance.

13. "Land Occupier" means any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of Chapter 40, whether as owner, lessee, renter, tenant, or otherwise.

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

15. "Soil and Water Conservation Practice" means those structural and vegetative practices applied to the land for the purpose of controlling soil erosion, sediment and other water pollutants.

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

17. "State Board" means the State Soil and Water Conservation Board as defined in Chapter 40.

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

SWC 2. State Board Functions.

A. ESTABLISHING APPROVED PRACTICES AND MAXIMUM RATES

1. The State Board, in consultation with the districts, shall maintain a list of practices which are eligible for cost-share funds and a schedule of maximum rates. The list shall be contained in SWC 4 of these rules and the schedule in SWC 5. Changes to the list and schedule shall be made in the manner provided by the rules-making provisions of Minnesota Statutes, Chapter 15.

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

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

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

c. They must be non-production practices.

3. The maximum cost-share rates established by the State Board represent the maximum per cent of the total cost of a practice that may be funded by state cost-share funds. Where state and federal monies are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.

B. ALLOCATION OF FUNDS

1. Before the State Board can allocate cost-share funds to a district, it must first receive the district's application for cost-share funds. The application shall be made on forms provided by the State Board and must be accompanied by the district's Annual Plan. The State Board will accept applications until April 1, 1978, and shall give preference to early applications.

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

a. Priorities for the control of soil erosion and sediment.

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

c. Availability of cost-share funds from other sources.

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

3. Following review, the State Board shall provide grants to the districts for the purpose of cost-sharing with land occupiers for the application of approved practices. In addition to cost-share grants, the State Board may make grants to districts for administrative costs and to provide technical services necessary to carry out the design and application of the approved practices which are cost-shared by the district.

C. MONITORING

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

SWC 3. District Functions.

A. APPLICATION FOR FUNDS BY DISTRICTS

Each district shall apply for funds as indicated in SWC 2. B.

B. ADMINISTRATION OF FUNDS

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

2. Prior to considering any applications from land occupiers for cost-share assistance, the District Board shall establish the cost-share rates for practices to be installed under the program, which shall not exceed the maximum rates established by the State Board. They shall consider:

a. Advice of technical experts familiar with the district;

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

c. District priorities as established in the districts' plans; and

d. Cost-share funds available.

C. APPLICATION FOR FUNDS BY LAND OCCUPIERS

1. Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the State Board and available from the district office. Each application shall be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner must also bear the owner's signature. Applications must be submitted not later than June 1. The District Technician shall make a determination of need and cost estimate prior to review by the District Board. Specifics on the desired practice which may be required by the District Board in their consideration of the application shall be included.

2. A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The District may share the cost of such a Group Project provided that all of the land occupiers are eligible as individuals and the practice or practices satisfy the criteria of the program. The land occupiers must reach agreement on the division of payments and shall select a member of the group to act as their spokesman in negotiations with the District. The group spokesman shall be

identified on the application and shall file the form with the District. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

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

D. CRITERIA FOR DISTRICT BOARD REVIEW

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

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

3. The primary purpose of the desired practice must be the control of soil erosion, reduction of sediment delivery, or protection of water quality. In cases where the "primary purpose" is questionable, the District Board shall make a determination of the acceptability of the application. Additionally, the District Board shall make determination of the need for supplemental practices to protect any practice installed under this program, e.g., fencing of water impoundment structures. If the District Board determines that supplemental practices are necessary, they may authorize cost-sharing for their installation.

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

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

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

7. Consideration shall be given to whether federal or other funds are available to supplement the costs of the project.

8. The practice must comply with the specifications of the Field Office Technical Guide of the USDA-Soil Conservation Service as adopted by the Soil and Water Conservation District. Such specifications shall be subject to periodic review and revision by the Soil Conservation Service to reflect advancements in the "state of the art."

9. Such other criteria as deemed appropriate by the district board.

E. DISTRICT APPROVAL

The District Board shall either approve or deny the application. If approved, the District Board shall instruct the Chairman or acting Chairman to sign the application. Once signed, the application becomes the contract between the District and land occupier and serves as the authorization for work to proceed on the practice. If denied, the District Board shall notify the land occupier in writing within 30 days,

of the reason for denial of the application. Changes in any provisions of the contract are subject to review and approval of the District Board.

F. DISTRICT RECORDS

The District shall maintain a current ledger of all cost-share contracts on forms provided by the State Board. The ledger shall specify the land occupiers which the District has contracted with, the practices involved, status of construction and a total of funds encumbered. Districts having funds which are unencumbered by December 1 of each program year may be required to return those funds to the State Board for reallocation to districts requiring additional funds.

G. PAYMENTS

1. Construction of practices shall be monitored by the District to insure compliance with the specifications in the Field Office Technical Guide. Upon completion, the district technician shall certify whether or not the practice has been satisfactorily performed, which includes a certification by the District Conservationist that the practice meets the requirements of the Field Office Technical Guide. No such certification shall be made until all specifications have been satisfied. Upon certification of completion, the land occupier shall request payment.

2. In-kind services provided by the land occupier such as, but not limited to, earth work, seedbed preparation and seeding, can be credited toward the land occupier's share of the total cost of the practice. The District Board shall determine whether charges for such services are prudent and reasonable. In cases where the actual cost of the practice exceeds the estimated cost, the District may only share the approved percentage of the estimated cost. Where the actual cost is less than the estimated cost the district shall only share the approved percentage of the actual cost of the practice. The District Board shall review the receipts provided by the land occupier to determine the actual cost of the practice. When the District determines that all claims are reasonable and justified, they shall authorize issuance of a check for the District share of the practice. Where the District Board determines that certain claims are not justified they shall notify the land occupier in writing of the unjustified claims within 30 days. The District Board shall then authorize the issuance of a check for the District share of the justified claims.

H. MAINTENANCE

The land occupier is responsible for operation and maintenance of practices applied under this program. Should the land occupier fail to maintain such practices or willfully

remove them during their effective life, the land occupier shall be liable for the amount of financial assistance received for their installation. The District Board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier shall not be held liable for cost-share assistance received provided that soil and water conservation practices are applied which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the application of practices which will replace practices which were applied with cost-share assistance and were removed by the land occupier during their effective life or failed due to improper maintenance.

I. APPEALS

In cases where a land occupier feels he has been treated unfairly, he may demand that the District Board give him a hearing to review its decision. Should the land occupier and District Board reach an impasse, the land occupier may petition in writing for a hearing before the State Soil and Water Conservation Board. If it grants the hearing, the State Board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for 10 days after the hearing. The referee, if used, shall report

his findings and recommendation to the State Board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the District Board.

J. REPORTS TO STATE BOARD

Each district shall submit to the State Board the reports identified in SWC 2.

SWC 4. Approved Practices.

A. EROSION CONTROL STRUCTURES

1. Definition: A structure to (1) stabilize the grade or control head-cutting in natural or artificial channels; (2) provide temporary storage of floodwater; (3) control release rate providing downstream channel stability; or (4) impound water.

2. Purpose: To control soil erosion and sediment. An erosion control structure may provide multiple benefits including but not limited to water supply for livestock, recreation, flood control, channel stability, wildlife habitat and fire prevention.

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

4. Policies:

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

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

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

d. Cost-sharing may be authorized for plantings and seeding required to stabilize the structure. Consideration shall be given to those species that provide wildlife habitat and visual enhancement.

e. Erosion control structures which provide multiple benefits will be encouraged provided the primary benefit is soil erosion and sediment control.

B. STRIPCROPPING

1. Definition: Stripcropping shall mean the development and application of a cropping system for a farming unit which provides for planting row crops with the contour where practicable and incorporates alternate strips of row crops, close sown, and sod crops.

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

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

4. Policies: Cost-sharing may be authorized for the cost of establishing the system.

C. TERRACES

1. Definition: An earth embankment, or a combination ridge and channel constructed across the slope.

2. Purpose: Terraces are constructed to:

a. reduce slope length;

b. reduce erosion;

c. reduce sediment content in runoff water;

d. intercept and conduct surface runoff at a non-erosive velocity to stable outlet;

e. retain runoff for moisture conservation;

f. prevent gully development;

g. re-form the land surface; and

h. reduce flooding.

Terraces may provide additional benefits by creating wildlife habitat.

3. Applicability: This practice applies where:

a. water erosion is a problem;

b. there is a need to conserve water;

c. the soils and topography are such that terraces can be constructed and farmed with a reasonable effort.

d. a suitable outlet can be provided.

e. runoff and sediment damages land or improvements downstream or impairs water quality.

4. Policies:

a. Cost-sharing is authorized for construction necessary to properly establish the terraces including earthwork, material and seedings if necessary.

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

D. DIVERSIONS

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

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

3. Applicability: This practice applies to sites where:

a. runoff from higher lying areas is damaging cropland, pastureland, farmsteads, or conservation practices such as terraces or stripcropping;

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

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

d. cost-sharing is authorized for tile systems necessary for the establishment and operation of erosion control practices such as waterways, terraces or diversions.

e. cost-sharing is authorized for seedings necessary to properly establish the practices or permanently stabilize critical areas.

E. STORMWATER CONTROL SYSTEMS

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

2. Purpose: The purpose of this system of elements is to provide a means of removing runoff to protect the area from flood damage and erosion, to prevent pollution of watersheds, lakes and streams, to protect natural scenic areas, and to provide for the conservation of the natural resources of the area. Additional benefit may be provided through creation of wildlife habitat.

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

4. Policies:

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

b. Cost-sharing is authorized for tile systems necessary for the establishment and operation of erosion control practices such as waterways, terraces or diversions.

c. Cost-sharing is authorized for seedings necessary to properly establish the practices or permanently stabilize critical areas.

F. FIELD WINDBREAKS

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

2. Purpose: To reduce soil blowing; to conserve moisture; to control snow deposition; to protect crops, livestock and wildlife and to beautify and otherwise enhance the landscape.

3. Applicability: In or around open fields which need protection against wind damage to soils.

Additional benefit may be realized from the creation of wildlife habitat.

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

G. ANIMAL WASTE CONTROL SYSTEMS

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

2. Purpose: Agricultural waste management systems are used to manage wastes in rural areas in a manner which prevents or minimized degradation of air, soil and water resources and protects public health and safety. Such systems are planned to preclude discharge of pollutants to surface or ground water and, to the fullest practicable extent, recycle wastes through soil and plants.

3. Applicability: To any animal impoundment any part of which is located within 300 feet of a stream or 1,000 feet of a lake.

4. Policies:

a. Cost-sharing is authorized for all structures and vegetative practices necessary to store animal wastes or control stormwater runoff from animal confinement areas including storage facilities, diversions, waste storage pond, and waterways.

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

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

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

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

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

g. In cases where a holding tank is necessary to control pollution and will become an integral part of a building, the normal cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable

to the foundation shall be represented by the top four feet of the storage tank walls.

h. Equipment utilized in the handling or transfer of animal waste is ineligible for cost-sharing.

H. CRITICAL AREA STABILIZATION

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

2. Purpose: To provide permanent vegetative cover to stabilize the soil; to protect from wind and water erosion; reduce damage from sediment and runoff to downstream areas; improve wildlife habitat; enhance natural beauty.

3. Applicability: On sediment producing, highly erodible or severely eroded areas (including urban areas), such as dams, dikes, mine spoil, levees, channels, waterways, terrace backslopes, surface mined areas, roadsides and denuded or gullied areas where vegetation is difficult to establish.

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

SWC 5. Cost-Share Rates

A. MAXIMUM RATES

The maximum per cent of the total cost of a practice that may be funded by state cost-share funds is 75 per cent.

Where state and federal monies are cost-shared on the same project, their combined amount shall not exceed 75 per cent of the total cost of the project.

B. DISTRICT RATES

Each district shall establish its cost-share rates as provided in SWC 3. B. 2.