

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General Natural Resources

TO : Lee Sheey - 2-19 R admin Bldg

DATE: June 1, 1978

FROM : Bill Clapp Bill
Spec. Asst. Atty. Genl.

PHONE: 6-3294

SUBJECT: Cost-Share Program Rules

I'd like a favor of you if you can. Can you let me know by Friday, June 9, if you want any changes made to this thing. That will let me get it to the State Register by the 12th, even though you can't file it before the 13th.

With that schedule, there will be no gap between the expiration of the temporary rules, and the effective date of these permanent rules.

If you can't, you can't. Practically speaking, a time gap should cause no harm.

AWC:me
Att.

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

DEPARTMENT OF NATURAL RESOURCES
Centennial Office Building • St. Paul, Minnesota • 55155
(612) 296-3767

CERTIFICATE OF BOARD's

ADOPTION OF RULES RESOLUTION

I, Vernon F. Reinert, do hereby certify that I am Executive Director of the Soil and Water Conservation Board of the State of Minnesota, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Soil and Water Conservation Board duly and properly called and held on the ninth day of May, 1978; that a quorum was present at said meeting; (that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that the rules relating to the Minnesota Soil and Water Conservation Board Cost-Share Program be and they hereby are approved and adopted, pursuant to authority vested in me by M.S. Chapter 40 and that Vernon F. Reinert, Executive Director of the Soil and Water Conservation Board, be and hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this thirteenth day of June, 1978.

Executive Director

Leonard Pikal, Chr.
Attest by one other Officer.

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

SOIL & WATER CONSERVATION BOARD

Proposed Rules for the
Cost-Share Program

CERTIFICATE OF COMPLIANCE

I am familiar with the procedures, documents and records in this matter, and can certify that this rule has been adopted in conformance with applicable statutes and rules.

Dated: May 30, 1978.

A. W. Clapp

A. W. CLAPP III
Special Assistant Attorney General

Soil and Water Conservation Board

Adopted Rules for the Cost-Share Program

The proposed rules published at State Register, Volume 2, Number 30, January 30, 1978 (2 S.R. 1422), are adopted and are identical to their proposed form, with the following amendments:

Rules as Adopted

SWC 1 Authority, scope, definitions

A. Authority and scope. Minn. Stat. ch. 40 authorizes the State Soil and Water Conservation Board, in cooperation with the Soil and Water Conservation Districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. These rules provide procedures and criteria to be followed by the State Board in allocating cost-sharing funds to districts, and standards and guidelines which the District Boards shall include in all cost-sharing contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~17. "Land occupier" means any person, firm, or corporation 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, including, during the life of a practice, successors of a land occupier who received a cost-share payment.~~

17. "Land occupier" means any person, firm, or corporation, including the governments of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of the state, who shall be in possession of, any lands lying within a district organized under the provisions of ch. 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

18. "Non-production practice" means a soil and water conservation practice which is installed or applied to control soil erosion, reduce sediment yield, or protect water quality.

Practices installed or applied primarily to bring land into production or to increase the short term productivity are excluded.

19. "Program plan" means a statewide plan developed by the State Board, in consultation with the districts and appropriate agencies, for control of the soil and water conservation problems in the state.

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

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

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

23. "Stream" means a well defined channel or bed that has water in it at some time of the year under normal conditions. This includes natural perennial and 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 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 Minn. Stat. ch. 15.

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

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

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

c. They must be non-production practices.

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

B. Allocation of funds.

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

2. Before the State Board can allocate cost-share funds to a district, it must first receive the district's annual

application for cost-share funds. The application shall be made on forms provided by the State Board and received by the State Board by January 1. The application must be accompanied by the district's annual plan.

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

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

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

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

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

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

C. Monitoring. For the purpose of monitoring the progress of the program and utilization of funds, the State Board shall receive from each district quarterly reports by October 15, January 15, and April 15, and an annual report of the year's accomplishments by July 15. The State Board may require such additional special

reports as may be deemed necessary by the State Board to monitor the cost-sharing program. The reports shall be on forms provided by the State Board.

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

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

3. Prior to considering any applications from land occupiers for cost-share assistance, the District Board shall establish the cost-share rates for practices to be installed under the program, which shall not exceed the maximum rates established by the State Board. This decision shall be based on the following factors:

a. advice of technical experts familiar with the district;

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

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

d. cost-share funds available.

C. Application for funds by land occupiers.

1. Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the State Board and available from the district office. Each application shall be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the fiscal year beginning July 1. After initial screening by the District Board, assigned S. C. S. personnel shall be responsible for making a determination of need and cost estimate. Actual determination of need may be done by the District Technician. Additional information on the desired practice which may be required by the District Board in their consideration of the application, shall be included.

2. A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project provided that all of the land occupiers are eligible as individuals and the practice or practices satisfy the criteria of the program. The land occupiers must reach agreement on the division of payments. The group spokesperson shall be identified on the application and shall file the form with the district, and shall negotiate with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

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

D. Criteria for District Board review.

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

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

3. The primary purpose of the desired practice must be the control of soil erosion, reduction of sediment delivery, or protection of water quality. In cases where the "primary purpose" is questionable, the District Board shall make a determination of the acceptability of the application. Additionally, the District Board shall make determination of the need for supplemental practices to protect any practice

installed under this program, e.g., fencing of water impoundment structures. If the District Board determines that supplemental practices are necessary, they ~~may~~ shall authorize cost-sharing for their installation.

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

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

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

7. The practice must comply with the specifications of the Field Office Technical Guide~~ of the USDA Soil Conservation Service as adopted by the Soil and Water Conservation Districts~~.

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

writing within 30 days after board action, of the reason for denial of the application. Changes in any provisions of the contract shall be subject to review and approval of the District Board.

F. District records. The district shall maintain a current ledger of all cost-share contracts on forms provided by the State Board. The ledger shall specify the land occupiers with whom the district has contracted, the practices involved, status of construction and a total of funds encumbered. The district shall monitor all cost-sharing contracts to insure compliance with the provisions of SWC 3 B. 2. Districts having funds which are unencumbered by December 1 of each program period ~~may~~ shall be required to return those funds to the State Board for reallocation, if the State Board has determined the funds are of significant amount and there is another district that has greater need for them.

G. Payments.

1. Construction of practices shall be monitored by the District Board to insure compliance with the specifications in the Field Office Technical Guide. Upon completion, assigned S. C. S. personnel shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of the Field Office

Technical Guide. No such certification shall be made until all specifications have been satisfied. Upon certification of completion, the land occupier shall contact the district for payment and shall present all receipts for cost of the practice.

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

3. In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share agreement has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the practice units and/or estimated cost, or to postpone the completion date of the practice. Such changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share agreement covering the changes. Where the actual cost is less than the estimated cost the district shall only share the approved percentage of the actual cost of the practice. The District Board shall review the receipts provided by the land occupier to determine the actual cost of the practice. When the district determines, that all

claims are practical and reasonable, they shall authorize issuance of a check for the district share of the practice. Where the District Board determines that certain claims are not justified they shall notify the land occupier in writing of the unjustified claims within 30 days. The District Board shall then authorize the issuance of a check for the district share of the justified claims.

H. Maintenance. The land occupier is responsible for operation and maintenance of practices applied under this program. Should the land occupier fail to maintain such practices or willfully remove them during their effective life, the land occupier shall be liable for the amount of financial assistance received for their installation. The District Board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier shall not be held liable for cost-share assistance received provided the failure was caused by reasons beyond the land occupiers control, or if soil and water conservation practices are applied which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

I. Appeals. In cases where a land occupier feels he has been treated unfairly, he may request that the District Board review its decision. Should the land occupier and District Board reach an impasse, the land occupier may petition in writing for a hearing before the State Soil and Water Conservation Board. If it grants the hearing, which shall be informal, the State Board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for 10 days after the hearing. The referee, if used, shall report his findings and recommendation to the State Board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the District Board.

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

SWC 4 Approved practices.

A. Erosion control structures.

1. Definition: A structure such as, but not limited to, grade stabilization structures, floodwater retarding structures and multipurpose dams to (1) stabilize the grade or control head-cutting in natural or artificial channels; (2) provide

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

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

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

4. Policies:

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

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

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

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

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

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

B. Stripcropping

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

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

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

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

C. Terraces

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

2. Purpose: Terraces are constructed to:

~~a. reduce slope length,~~

~~b~~a. reduce erosion;

~~c~~b. reduce sediment content in runoff water;

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

~~e. retain runoff for moisture conservation,~~

~~f~~d. prevent gully development;

~~g. re-form the land surface, and~~

~~h~~e. reduce flooding.

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

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

~~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.~~

4. Policies:

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

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

D. Diversions

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

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

3. Applicability: This practice applies to sites where:

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

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

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

4. Policies:

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

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

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

E. Stormwater control systems

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

2. Purpose: The purpose of this system of elements is to provide a means of regulating and/or removing runoff to protect the area from flood damage and erosion, and to prevent pollution of watersheds, lakes and streams~~,~~. ~~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 control system. Such practices shall include, but are not limited to: channel lining, chutes, drop spillways, vegetative filter strips, protective outlets, sod waterways, permanent sod cover, fencing and permanent vegetation including trees, shrubs and grasses. ~~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 ~~water~~ways~~, terraces or diversions.~~ stormwater control systems.

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

F. Field windbreaks

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

2. Purpose: To reduce ~~soil blowing, to conserve moisture, to control snow deposition, to protect crops, livestock and wildlife and to beautify and otherwise enhance the landscape.~~ wind erosion. Additional benefits may be

gained from: the protection of crops, livestock, and wildlife; increased moisture conservation by controlling snow deposition; and to beautify and otherwise enhance the landscape.

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

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

G. Animal waste control systems

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

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

3. Applicability:

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

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

4. Policies:

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

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

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

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

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

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

g. A holding tank which will become an integral part of a building is eligible for cost-sharing provided there is no other feasible alternative available for controlling pollution. The District Board, with technical review completed by technicians available to them, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

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

H. Critical area stabilization

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

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

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

4. Policies:

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

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

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.

PROPOSED RULES

Pursuant to the provisions of Minn. Stat. § 15.0411 to 15.052, the *State Register* publishes notices of hearing on proposed new or amended rules, including the full text of the new or amended rules, including the full text of the new or amended rule proposed for adoption, at least 30 days before the date set for the hearing.

Pursuant to Minn. Stat. § 15.0412, subd. 4, an agency may, with approval of the chief hearing examiner, incorporate by reference into the text of a rule, provisions of federal law, or rule, or other material which are 3000 words or more in length or would require five or more pages of print in the *State Register* and which are conveniently available to interested persons.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend, or repeal a rule does not allow for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Soil and Water Conservation Board

Proposed Rules for the Cost-Share Program

Notice of Hearing

The Legislature has provided funds to be used to share the cost of implementing systems or practices for erosion control and water quality improvement which are designed to protect and improve the state's soil and water resources. Public hearings on proposed rules for the operation of the cost-share program will be held at the following dates and places.

March 1, 1978, in the conference room of the Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota.

March 2, 1978, in room 217 of the Lecture Center at Southwest State University, Marshall, Minnesota.

March 6, 1978, in the meeting room of the Department of Transportation District Office, 1000 West Highway 10, Detroit Lakes, Minnesota.

March 7, 1978, in the Lecture Hall, room 137 Wilson Hall, Itasca Community College, Route 3, Grand Rapids, Minnesota.

Each hearing will begin at 8:00 p.m.

The proposed rules are authorized and required by Minn. Stat. § 40.036 (1977 Supplement), and will replace emergency rules which have already been promulgated. The rules establish the procedures by which the Soil and Water Conservation Board allocates cost-share funds to the Soil and Water Conservation Districts. They list which kinds of conservation practices are eligible for cost-sharing. They set the maximum percentage of the cost of a practice that the district can fund. They establish the procedures a land occupier is to follow in applying for cost-sharing, and the standards the District Board is to apply in reviewing and approving or denying the application. They specify the responsibilities of a land occupier to maintain a practice funded under this program.

All interested persons will have an opportunity to participate in the hearings. Statements may be made orally and written materials may be submitted at the hearings. In addition, written materials may be submitted to hearing examiner Myron Greenberg at the Office of Hearing Examiners, 1745 University Avenue, Saint Paul, Minnesota 55104, either before the hearing or within five (5) days after the hearing. The hearing will be conducted as described in Minn. Stat., § 15.0412 and in Minnesota Rules HE 101-109.

A free copy of the proposed rules may be obtained by writing to the Soil and Water Conservation Board, Centennial Building, Saint Paul, Minnesota 55155. Additional copies will be available at the hearings. A "statement of need" explaining why the agency feels the proposed rules are necessary, and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Office of Hearing Examiners twenty-five (25) days before the hearing and will be available there for public inspection.

Please be advised that Minn. Stat., ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who

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SWC 1
is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, phone: (612) 296-5615.

Dated: January 16, 1978.

Soil and Water Conservation Board
Vernon F. Reinert
Executive Director

Rules as Proposed

Cost-Share Program Rules

SWC 1 Authority, scope, definitions.

A. Authority and scope. Minn. Stat., ch. 40, authorizes the State Soil and Water Conservation Board, in cooperation with the Soil and Water Conservation Districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. These rules provide procedures and criteria to be followed by the State Board in allocating cost-sharing funds to districts, and standards and guidelines which the District Boards shall include in all cost-sharing contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. "Land occupier" means any person, firm, or corporation 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, including, during the life of a practice, successors of a land occupier who received a cost-share payment.

18. "Non-production practice" means a soil and water conservation practice which is installed or applied to control soil erosion, reduce sediment yield, or protect water

quality. Practices installed or applied primarily to bring land into production or to increase the short term productivity are excluded.

19. "Program plan" means a statewide plan developed by the State Board, in consultation with the districts, for control of the soil and water conservation problems in the state.

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

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

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

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

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 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 Minn. Stat., ch. 15.

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

a. Their primary purpose must be the control of soil erosion 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 funds are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.

B. Allocation of funds.

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

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

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

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

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

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

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

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

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

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SWC 3
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 funds from the State Board, the respective districts shall be 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 funds within the rules established herein.

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

3. Prior to considering any applications from land occupiers for cost-share assistance, the District Board shall establish the cost-share rates for practices to be installed under the program, which shall not exceed the maximum rates established by the State Board. This decision shall be based on the following factors:

a. Advice of technical experts familiar with the district;

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

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

d. Cost-share funds available.

C. Application for funds by land occupiers.

1. Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the State Board and available from the district office. Each application shall be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the fiscal year beginning July 1. After initial screening by the District Board, assigned S. C. S. personnel shall be responsible for making a determination of need and cost estimate. Actual determination of need may be done by the District Technician. Additional information on the desired practice which may be required by the District Board in their consideration of the application, shall be included.

2. A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project provided that all of the land occupiers are eligible as individuals and the practice or practices satisfy the criteria of the program. The land occupiers must reach agreement on the division of payments. The group spokesperson shall be identified on the application and shall file the form with the district, and shall negotiate with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

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

D. Criteria for district board review.

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

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

3. The primary purpose of the desired practice must be the control of soil erosion, reduction of sediment delivery, or protection of water quality. In cases where the "primary purpose" is questionable, the District Board shall make a determination of the acceptability of the application. Additionally, the District Board shall make determination of the need for supplemental practices to protect any practice installed under this program, e.g., fencing the 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 shall be responsible for operation and maintenance of practices applied under this program.

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

7. The practice must comply with the specifications of the Field Office Technical Guide of the USDA-Soil Conservation Service as adopted by the Soil and Water Conservation Districts.

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 shall be subject to review and approval of the District Board.

F. District records. The district shall maintain a current ledger of all cost-share contracts on forms provided by the State Board. The ledger shall specify the land occupiers with whom the district has contracted, the practices involved, status of construction and a total of funds encumbered. The district shall monitor all cost-sharing contracts to insure compliance with the provisions of SWC 3,B.2. Districts having funds which are unencumbered by December 1 of each program period 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 Board to insure compliance with the specifications in the Field Office Technical Guide. Upon completion, assigned S. C. S. personnel shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of the Field Office Technical Guide. No such certification shall be made until all specifications have been satisfied. Upon certification of completion, the land occupier shall contact the district for payment and shall present all receipts for cost of the practice.

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

3. In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share agreement has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the practice units and/or estimated cost, or to postpone the completion date of the practice. Such changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share agreement covering the changes. Where the actual cost is less than the estimated cost the district shall only share the approved percentage of the actual cost of the practice. The District Board shall review the receipts provided by the land occupier to determine the actual cost of the practice. When the district determines that all claims are practical and reasonable, they shall authorize issuance of a check for the district share of the practice. Where the District Board determines that certain claims are not justified they shall notify the land occupier in writing of the unjustified claims within 30 days. The District Board shall then authorize the issuance of a check for the district share of the justified claims.

H. Maintenance. The land occupier is responsible for operation and maintenance of practices applied under this program. Should the land occupier fail to maintain such practices or willfully remove them during their effective life, the land occupier shall be liable for the amount of financial assistance received for their installation. The District Board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier shall not be held liable for cost-share assistance received provided the failure was caused by reasons beyond the land occupiers control, or if soil and water conservation practices are applied which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

I. Appeals. In cases where a land occupier feels he has been treated unfairly, he may request that the District Board review its decision. Should the land occupier and District Board reach an impasse, the land occupier may petition in writing for a hearing before the State Soil and Water Conservation Board. If it grants the hearing, which shall be informal, the State Board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for 10 days after the hearing. The referee, if used, shall report his findings and recommendation to the State Board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the District Board.

J. Reports to state board. Each district shall submit to the State Board the reports identified in SWC 2.

SWC 4. Approved practices.

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SWC 4

A. Erosion control structures.

1. Definition: A structure such as, but not limited to, grade stabilization structures, floodwater retarding structures and multipurpose dams to (1) stabilize the grade or control head-cutting in natural or artificial channels; (2) provide temporary storage of floodwater; (3) control release rate providing downstream channel stability; or (4) impound water.

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

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

4. Policies:

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

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

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

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

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

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

B. Stripcropping.

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

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

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

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

C. Terraces.

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

2. Purpose: Terraces are constructed to:

a. reduce 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.

4. Policies:

a. Cost-sharing is authorized for construction

necessary to properly establish the terraces including earthwork, material and seedings if necessary.

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

D. Diversions.

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

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

3. Applicability: This practice applies to sites where:

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

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

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

4. Policies:

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

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

2. Purpose: The purpose of this system of elements is to provide a means of regulating and/or removing runoff to protect the area from flood damage and erosion, 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 control system. Such practices shall include, but are not limited to: channel lining, chutes, drop spillways, vegetative filter strips, protective outlets, sod waterways, permanent sod cover, fencing and permanent vegetation including trees, shrubs and grasses 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.

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SWC 4

G. Animal waste control systems.

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

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

3. Applicability:

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

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

4. Policies:

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

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

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

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

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

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

g. A holding tank which will become an integral part of a building is eligible for cost-sharing provided there is no other feasible alternative available for controlling pollution. The District Board, with technical review completed by technicians available to them, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

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

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, but not limited to, dams, dikes, abandoned mine spoil, levees, channels, waterways, terrace backslopes, and denuded or gullied areas where vegetation is difficult to establish.

4. Policies:

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

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

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.

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

In the Matter of Proposed
Rules for a Soil and Water
Conservation Cost-Share Program

Statement of Need
and Evidence

Increasing soil erosion and sedimentation, with resultant degradation of the water of this state, has in part been accelerated by intensified agriculture and changes in land use. Past conservation cost-sharing programs, while achieving mixed success, have largely been directed at providing financial incentives to rural landowners, particularly farmers, in controlling their erosion and sediment problems.

In addition to limiting cost-sharing to rural areas, these programs have not been funded at levels adequate to accelerate the conservation application programs. This is particularly critical in view of the increasing emphasis on the protection of our soil and water resources in Minnesota, and throughout the nation.

To this end, the Minnesota Legislature by amending Minnesota Statutes, Chapter 40, authorized 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 permanent soil and water conservation practices. The use of the term "land occupier" makes it possible for all residents of the state, who have an identified soil erosion problem on their property, to become eligible for receiving cost-share assistance.

The proposed rules, are authorized and required by Minnesota Statutes, Section 40.036 (1977 Supplement), and will replace emergency rules which have already been promulgated. The rules provide procedures and criteria to be followed by the State Board in allocating cost-sharing funds to districts, and standards, guidelines and approved soil conservation practices which the District Board shall

consider in all cost-sharing contracts with land occupiers.

The following statements refer to the more important sections in the proposed rule and clarify the procedures identified in the last paragraph.

SWC 1-B. DEFINITIONS

The definitions, for the most part, are self-explanatory. While a definition as listed may have different meanings in other circumstances, for the purposes of this program, its meaning as described shall apply.

SWC 2-A. STATE BOARD FUNCTIONS - ESTABLISHING APPROVED PRACTICES AND MAXIMUM RATES

All practices approved by the State Board must have a primary purpose of controlling soil erosion and sediment and the protection of water quality. In addition, they must be enduring in nature. The State Board, in consultation with various agricultural agencies, determined that a minimum effective life of ten years is not unreasonable when considering the fact that many conservation practices, when properly maintained, are effective in controlling soil erosion and sediment and protecting water quality far in excess of ten years. Minimum ten year effective life is also consistent with the design provisions of the federal cost-sharing program as administered by the Agricultural Stabilization and Conservation Service.

Practices approved by the State Board must be for controlling soil erosion and sedimentation problems and not solely for increasing the short term productivity of the site where it is applied.

SWC 2-B. ALLOCATION OF FUNDS

As required by Statute, both the State Board and District Boards have to allocate cost-sharing monies to areas where the need for controlling soil erosion and sedimentation and the protection of water quality is the greatest. Thus, each

must prepare detailed plans locating and describing these areas. The extent, complexity and correlation of such areas is the basis for districts requesting and receiving cost-share funds from the State Board.

In addition to those items, the State Board shall consider the historical success or "track record" of the district in applying soil and water conservation practices; the availability of money from other programs such as the federal cost-share program previously mentioned and the readiness of the district, or ability of the district, to effectively utilize the funds. The last point refers to such things as the presence of sufficient technical and administrative staff. It also provides the State Board with the means of withdrawing or withholding funds from a district that is involved in improper activities or mismanagement of funds.

SWC 3-B. DISTRICT FUNCTIONS - ADMINISTRATION OF FUNDS

After receiving a grant from the State Board, each District Board is responsible for administering the program within the broad guidelines established by the State Board and represented by the Cost-Share Program Rules. Within the provisions of this rule, the District Board is responsible for making all decisions concerning the program.

SWC 3-C. APPLICATION FOR FUNDS BY LAND OCCUPIERS

Land occupiers, whether as individuals or as groups, apply to the district for cost-share assistance. The owner's signature on the application is important from the standpoint of maintenance of a practice, as obviously, if the owner disagrees with the intentions of a tenant, this may cause removal of a practice.

The Soil Conservation Service, an agency of the United States Department of Agriculture and technically responsible for this program, makes determinations of needs and cost estimates of proposed projects. In actual practice, district

employees, while operating under the technical supervision of the Soil Conservation Service, will make these determinations.

SWC 3-D. CRITERIA FOR DISTRICT BOARD REVIEW

The District Board considers several points when reviewing applications for cost-share assistance. Some of the more significant of these are the requirement of the applicant to be a district cooperator, determination of the primary purpose of the desired practice, maintenance requirements, and compliance of the practice with specifications of the United States Department of Agriculture-Soil Conservation Service Technical Guide.

As long as the primary purpose of the practice, that of controlling soil erosion, reduction of sediment delivery and protection of water quality, has been met, the District Board may approve supplemental practices. These practices may be needed to maintain or protect a cost-shared practice. In addition, conservation practices may provide additional benefits to wildlife, aesthetics, etc., provided the primary purpose has been met.

As required by law, the land occupier must maintain his cost-shared practice for a minimum of ten years. More specific information on this topic will be covered in the maintenance section.

To insure technical uniformity and engineering soundness, the practices must comply with specifications of the United States Department of Agriculture-Soil Conservation Service Technical Guide. This guide has been used for many years and is periodically revised to reflect changes in the "state of the art" of conservation practice design and layout.

The cooperator agreement is the basis by which the Soil Conservation Service works through districts in providing the majority of its technical

assistance to land occupiers. The agreement is also the basis for districts providing land occupiers with the services they have requested.

SWC 3-E. DISTRICT APPROVAL

After the application is approved by the District Board and signed by the Chairman or Acting Chairman, it becomes a contract between the district and land occupier. This process also authorizes work to proceed on the project.

SWC 3-G. PAYMENTS

Once the project has been completed and certified by the Soil Conservation Service as meeting the specifications of the Technical Guide, the land occupier presents his list of expenses, whether in-kind or out-of-the-pocket, to the District Board. The use of the term "receipt" implies that the district shall only authorize payment when they know the contractor(s) or vendors have been paid. This is important from the standpoint of maintaining contractors' and vendors' interest in the program. If they are not paid by the farmer, they may lose interest!

The District Board reserves the right to approve amendments or changes in the original contract. Accordingly, they may also amend claims that they feel are unreasonable or unjustified.

SWC 3-H. MAINTENANCE

As was discussed earlier, the land occupier is responsible by law for maintaining the practice during its effective life. In addition, the District Board has the responsibility of monitoring all cost-share contracts to insure compliance. (This is mentioned in SWC 3-B.2.)

The ten year maintenance requirement is the same as the present requirement for similar practices installed under the Agricultural Stabilization and Conservation Service cost-sharing program.

In the event of "act of God" damages, such as flooding and drought, the land occupier is not liable for monetary damages. In such cases, he is eligible to request cost-sharing assistance to restore the practice. In all cases, the District Board has the authority to make the decisions regarding maintenance compliance.

To help prevent loss of practices when the land changes ownership, the contract between the district and the land occupier states that the land occupier has the moral responsibility to inform new owners that there is a conservation maintenance requirement in effect. It is felt that, short of recording such contracts as deed restrictions, this is the only alternative available that is practical and feasible.

SWC 3-I. APPEALS

The message to be gained from this section is that through informal hearings an appeal process is provided to land occupiers who feel they have been treated unfairly. It is hoped that the majority of the contested cases can be resolved locally, without involving the State Board.

SWC 4. APPROVED PRACTICES

Generally speaking, the practices are self-explanatory. The eight practices represent either individual, or combinations of, practices which will control or prevent soil erosion, sedimentation and protect water quality. By review of the purpose and applicability of each, a reference is made to the primary purpose, non-production and supplemental (multiple benefits) aspects of this program which was discussed earlier. They are practices which, if properly maintained, can achieve a minimum effective life of ten years.

As with other aspects of this program, the District Board has the authority to make the determinations of feasibility, primary purpose and other factors discussed earlier.

A. EROSION CONTROL STRUCTURES

One of the policies of this practice is to discourage construction when the contributing drainage area is lacking in the conservation practices necessary to prevent sedimentation and protect water quality.

C. TERRACES

A policy of this practice is to limit cost-sharing on the tile, necessary to outlet water, on certain designs, to 300 feet below the last terrace. It is felt this would discourage the use of that tile as a component in a production oriented drainage system.

D. DIVERSIONS

Drain tile that is needed to install and maintain this and any other approved practice is eligible provided the primary purpose is met. It cannot be installed to solely provide production oeiented drainage.

F. FIELD WINDBREAKS

Under policies, the reasoning behind the requirement of controlling competitive vegetation for two years following planting is because that is the most critical time in achieving the successful establishment of a field windbreak.

G. ANIMAL WASTE CONTROL SYSTEMS

Under applicability, the importance of 300 and 1,000 feet respectively refers to the availability of information on such problem areas. Districts have been involved in inventorying animal confinement areas within this shoreland area (300 feet of a stream and 1,000 feet of a lake) and thus have knowledge of the problems that exist there. It is also felt that the majority of pollution problems caused by animal

confinement areas are located within this area. Therefore, by concentrating efforts in this direction, the majority of the problems can be solved with the available funding.

Situations occur when it becomes necessary to deviate from established distance requirements. A case in point is the Minnesota Pollution Control Agency cited feedlots. To offer cost-share assistance to these, and other identified pollution problems, a District Board is often forced to go beyond strict distance requirements.

The Minnesota Pollution Control Agency is the designated pollution agency in Minnesota. Therefore, it is reasonable to expect them to assist districts in making these determinations

Under policies, holding tanks (or under-the-building storage) is discouraged. However, when there is no other feasible alternative available, the District Board may authorize cost-sharing. The top four feet of the holding tank wall is not eligible for cost-sharing because it is felt, in most cases, this is the portion that would normally be the footing - and would be needed regardless of whether or not a tank was installed.

The justification for discouraging under-the-building storage has two main points. First, history has shown that it is harder to encourage complete systems when under-the-building storage is used. Second, with outside storage, more pollution control can be obtained for less money.

H. CRITICAL AREA STABILIZATION

Under policies, the reason for not authorizing cost-sharing for roadside projects (and streambank and lakeshore projects - which aren't

specifically listed) is because the State Board already is administering a program for correcting and controlling erosion, sedimentation and protecting water quality on these sites. To allow cost-sharing under both programs would be duplication of state monies and, therefore, is being discouraged.

SWC 5. COST-SHARE RATES

The maximum rate of cost-sharing that can be offered by a district is 75 percent of the total cost.

A popular feature of this program is the encouragement of matching state with federal or other cost-share monies. By doing so, monies from all sources can be most effectively utilized. This is important in light of the Agricultural Stabilization and Conservation Service requirement of $2,500.00 maximum payment/farmer. By supplementing these monies with state funds to bring the maximum to 75 percent of the total, many heretofore unbuilt, expensive projects will be completed.

The 75 percent figure was not "pulled out of the air". Rather, it is in line with past cost-share percentage figures of the federal Agricultural Stabilization and Conservation Service program and, in the opinion of the State Board, represents a reasonable share of an individual land occupier's contribution. By lowering the percentage rate, adequate incentive to install practices may not be provided.

In view of the emphasis on treating critical areas first, the high percentage figures and matching of funds are not unreasonable.

Districts have the authority to set their individual rates lower than the state imposed maximum, but in no case can they offer more than 75 percent, whether by itself or in combination with other funds.

To insure compatibility of the federal Agricultural Stabilization and Conservation Service cost-share program with the state program, many of the practices

offered in both have been revised to make matching of funds more possible and easier to accomplish.

S

Greg Larson, Program Specialist

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

In the Matter of Proposed Rules for the Cost-Share Program

FINDINGS AND CONCLUSIONS

The Board has reviewed the REPORT OF THE HEARING EXAMINER, concurs in its FINDINGS and CONCLUSIONS, and adopts them as its own and incorporates them by reference in this document.

In addition, the Board finds that, with one exception, all changes to the proposed rule recommended by Board staff at the hearings, all of which the hearing examiner found appropriate, should be made. The exception is the change to SWC 3.D.7, which language the examiner solicited from Board staff because he then thought it to be legally required. His finding 11. indicates he now concurs with Board counsel that the language in the rule as proposed is lawful. The Board finds that the language as proposed should be adopted, because it enables the districts to utilize at all times the most current version of the guide, without the Board having to frequently amend the rule.

Dated: May 23, 1978.

STATE OF MINNESOTA
SOIL AND WATER CONSERVATION BOARD

By _____
VERNON F. REINERT
Executive Director

SOIL-78-001-AK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE SOIL AND WATER CONSERVATION BOARD

IN THE MATTER OF PROPOSED)
RULES FOR THE COST-SHARE)
PROGRAM.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, hearings were held on March 1, 2, 6 and 7, 1978, before Allan W. Klein, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Soil and Water Conservation Board on April 19, 1978; and

WHEREAS, the Soil and Water Conservation Board has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Soil and Water Conservation Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearings and that the Soil and Water Conservation Board has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Soil and Water Conservation Board has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 9th day
of May, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

In the Matter of Proposed Rules for the Cost-Share Program

ORDER ADOPTING RULE

WHEREAS, public hearings on the above-captioned rule have been held; and

WHEREAS, the REPORT OF THE HEARING EXAMINER finds all statutory and regulatory requirements have been met; and

WHEREAS, the proposed final rule drafted per the FINDINGS AND CONCLUSIONS of the Board has been approved by the Chief Hearing Examiner;

NOW, THEREFORE, said Cost-Share Program Rules, SWC 1 through SWC 5, are adopted.

Dated May 23, 1978.

STATE OF MINNESOTA
SOIL AND WATER CONSERVATION BOARD

By _____
VERNON F. REINERT
Executive Director

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE SOIL AND WATER CONSERVATION BOARD

In the Matter of Proposed Rules
for the Cost-Share Program.

REPORT OF HEARING EXAMINER

The above-entitled matter was heard by Allan W. Klein on the following dates and at the following places:

March 1, 1978 - Minnesota Pollution Control Agency
Roseville, Minnesota

March 2, 1978 - Southwest State University
Marshall, Minnesota

March 6, 1978 - Department of Transportation District Office
Detroit Lakes, Minnesota

March 7, 1978 - Itasca Community College
Grand Rapids, Minnesota

This was a rules hearing pursuant to Minn. Stat. Ch. 15, to determine whether the proposed rules, Minn. Rule SWC 1-SWC 5, should be adopted.

The following persons appeared for the Soil and Water Conservation Board (hereinafter the "Board"); Greg Larson, Program Specialist and A. W. Clapp III, Special Assistant Attorney General. Sixty-nine persons attending the hearings signed the register. The hearings continued until all interested groups and persons had an opportunity to be heard.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412

within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On December 5, 1977, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On January 30, 1978, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1421.

3. On January 19, 1978, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State fom the purpose of receiving such notice.

4. On February 2, 1978, the Board filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Board personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through March 14, 1978 for the receipt of written comments and statements.

6. On March 14, 1978, the Board filed a request for an Order for Incorporation by Reference pursuant to Minn. Stat.

§ 15.0412, subd. 5 (1977 Supp.). On March 7, 1978, the Chief Hearing Examiner issued his Order for Incorporation by Reference (Board Ex. 13).

STATUTORY AUTHORITY

7. Laws of Minnesota 1977, Ch. 304, § 9, subd. 3 (codified in 1977 Supp. as § 40.036, subd. 3) reads as follows:

> The state board shall promulgate rules specifying the procedures and criteria for allocating funds to districts for cost-sharing contracts. The rules shall also include standards and guidelines which the district shall include in all cost-sharing contracts. The state board may, for the purpose of implementing this section, exercise emergency power and adopt emergency rules pursuant to § 15.0412, subd. 5. No emergency rules may be adopted by the state board pursuant to this subdivision after July 1, 1978.

8. Pursuant to this grant, on November 14, 1977, the Board published its Notice of Intention to Adopt Emergency Rules (2 S.R. 971). On February 6, 1978, the Board published a Notice of Adoption of Emergency Rules with certain changes from the earlier-published proposed emergency rules (2 S.R. 1457). Thus, at the time that the hearings on the permanent rules were held, emergency rules were in effect.

SPECIFIC RULES

Proposed SWC 1: Authority, scope, definitions

9. SWC 1.A. provides a brief description of the Board's authority to adopt these rules and the purpose of the rules. It received no comment, and as a brief introduction to one otherwise unfamiliar with the Board's activities, it is found to be both needed and reasonable.

SWC 1.B. contains a variety of definitions which are needed to assist the reader of the rules in understanding some of the terms which they contain. Board Ex. 10 contains a list of proposed changes to the rules which resulted from the hearings. Three of those changes are non-controversial, and are found to be both needed and reasonable, as well as insubstantial changes. At the hearing, the Hennepin County Soil and Water Conservation District proposed that a new definition be added, and that a

number of proposed rules be modified to include the concept contained in the new definition. The rules as proposed by the Board were drafted with the concept that the Board would be essentially involved in funding of projects, but that the in-field work of approving design, estimating costs, and monitoring actual construction of projects would be done by employees of the United States Department of Agriculture's Soil Conservation Service. This dichotomy reflects present practices. Hennepin County believes, however, that it ought to be able to augment the work of SCS personnel by its own employees, and proposes that a "District Engineer" employed by the District Board, ought to be able to function in lieu of SCS personnel. The definition (that of "District Engineer") and other proposed amendments would have accomplished this goal. However, that proposal was not endorsed by Warren Curtis, an employee of the Soil Conservation Service. He stated that the service reserved the right to have final responsibility for projects, and that it would not permit a county employee to exercise its powers. At the conclusion of this discussion, the Board representative stated that the Board could not support the proposed change but that it had no objection if some informal arrangement were agreed upon between the SCS and Hennepin County. It is found that the Board's proposal, which does not include the concept of a county-employed "District Engineer" is both needed and reasonable, and that the solution proposed by the Board for an informal arrangement between SCS and Hennepin County is the appropriate manner to resolve this individual situation.

Proposed SWC 2: State Board Functions.

10. This proposed rule sets forth the functions to be performed by the state Board as opposed to district boards or landowners who desire to participate in cost-share programs. The proposed rule drew no criticism at the hearing, although the Board pointed out that there should be two minor amendments made to the wording. Such amendments are recommended, but with or without the changes, the rule, as proposed, is found to be both needed and reasonable.

Proposed SWC 3: District Functions.

11. This rule essentially sets out the procedures to be followed by districts in applying for funds from the State Board, and also sets forth procedures to be followed by land occupiers in applying for funds from districts. The rule drew no criticism at the hearings, but the Board pointed out that for purposes of clarification, a minor amendment to Section E ought to be made. The proposed amendment is both needed and reasonable and does not represent a substantial change.

SWC 3 D. contains criteria to be applied by the district board in reviewing applications for cost-share funds submitted to it by land occupiers. One of the criteria to be applied is that the proposed practice "must comply with the specifications of the field office technical guide of the U. S. D. A. Soil Conservation Service as adopted by the Soil and Water Conservation Districts." It was this document which the Board sought to have incorporated by reference pursuant to Finding No. 6 above. At each of the hearings, the Examiner inquired of those in attendance regarding the availability of this technical guide, and all agreed that it was readily available, both before the hearing and, it was anticipated, after the hearing. There is a copy of the technical guide available in each of the 90 county offices of the SCS (there are three counties in northeastern Minnesota which share one office).

There was discussion at the hearing, however, relating to the question of whether the rule ought to specify which version of the technical guide is incorporated by reference. This Examiner was the only person who felt that there was any reason to specify a specific version, while the Board and others all believed that it was desirable to permit changes in the technical guide adopted after the effective date of this rule to be used as criteria for the districts deciding whether the applicants' proposed practice was technically sound. The guide is a loose-leaf series of volumes containing technical specifications for

practices. While changes to existing practices are rare, they do occur from time to time. Persons at the hearing argued that as improvements to practices became known, and after testing are included in the technical guide, Minnesota land occupiers ought to be allowed to use the best available methods approved by the SCS in implementing their practices.

Regardless of the desirability of permitting the incorporation by reference of a document which will be changing from time to time, whether such an incorporation is allowable is essentially a matter of law. In the case of Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971), the Court held that the state legislature could not delegate its legislative powers to any outside agency, including the Congress of the United States. In that case, the state legislature had enacted certain taxation provisions in 1961 which, at the time, were the same as provisions of the Internal Revenue Code governing the areas in question. In addition, the legislature defined "gross income" as "the adjusted gross income as computed for Federal income tax purposes as defined in the laws of the United States for the taxable year . . . ." In 1964, the Internal Revenue Code was changed by Congress. The Commissioner of Taxation in Wallace attempted to apply the newly enacted provisions of the Code to a Minnesota taxpayer. He contended that by the Congressional change, state law was amended. The Court disagreed. It pointed out that the term "adjusted gross income" was an artificial concept, and went on to state:

> The amounts which are to be included or excluded in the determination of adjusted gross income are numerous and are subject to change. Many of the exclusions are based upon political and social rather than economic considerations. The same political and social considerations which are of significance to the federal tax policy are not necessarily of significance to the state's tax collection scheme. Federal provisions with respect to long-term capital gains exclusion, as well as depletion allowances, are continually the subject of controversy. Any and all of these provisions, as well as others, may be changed at any time by the Congress of the United States -- without consulting the Minnesota Legislature.

However, the Court went on to state in dicta that there were some cases which did allow state statutes to be amended by incorporation of future amendments to federal legislation, pointing out that such statutes "are auxiliary in nature and seek to achieve uniformity in implementation of national programs and policies."

In the case of State v. Wakeen, 263 Wis. 401, 57 N.W. 2d 364 (1953), the Wisconsin Supreme Court did uphold a criminal action against a person convicted of violating a statute which prohibited the sale of drugs by persons other than registered pharmacists. The statutory definition of "drugs" referred to "articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, . . ." The documents referred to are published by non-governmental bodies made up of representatives of the medical and pharmaceutical professions. The Court reasoned that there was no improper delegation because the documents referred to were in existence at the time of the legislation, and amendments thereto are "published independently of the statute and not in response to it." The Court also referred to the "eminence" of the publishers. Finally, the Court differentiated between delegation of legislative powers and delegation of non-legislative powers stating that this case represented a delegation of non-legislative powers which is permissible.

Similar definitions of "drugs" are contained in Minn. Stat. § 151.01, subd. 5, and 152.01, subd. 2.

It is believed by this Examiner that the possibility of a future change in the technical guide of the SCS, while indeed operating to amend the application of the rule, is not an impermissible delegation of authority. Such changes reflect changes in engineering and knowledge regarding the efficacy of various modes of implementing soil or water erosion practices, and do not involve the kinds of political and social considerations which

the Wallace court felt ought to be made by the legislature. Rather, changes to the technical guide are, in fact, "auxiliary in nature" as well as necessary to "achieve uniformity in implementation of national programs and policies". Therefore, the rule as originally proposed by the Board, is found to be both needed and reasonable and does not constitute an impermissible delegation. At the suggestion of the Examiner, the Board had prepared an amendment which would have specified a version of the technical guide to be incorporated by reference in the event that the Examiner were to find it necessary, but based on the above, it is not found to be necessary and need not be adopted.

There were no other comments to the remainder of the rule, and with the minor amendment noted earlier, the entire rule is found to be both needed and reasonable.

Proposed SWC 4: Approved Practices

12. This rule sets forth eight specific practices which are approved for cost-share funding by the State Board. While most of the proposed practices were non-controversial, some were the subject of a great deal of comment.

Before discussing each of the approved practices, it is appropriate to note that a number of persons submitted recommendations for the inclusion of practices which had not been proposed by the Board. Regardless of the desirability of these additional practices, it is found that their inclusion, at this stage, would constitute a "substantial change". Therefore, although they will not be discussed individually, the Board is urged to consider their inclusion in a subsequent rulemaking hearing. Individuals desiring to press these matters are referred to Minn. Stat. § 15.0415, which sets forth the procedure whereby citizens may petition an agency for a change in a rule.

The first practice proposed for approval (SWC 4 A.) relates to erosion control structures. Marilyn Lundberg, Chairman of the Ramsey County Soil and Water Conservation District, pointed out that it was possible to abuse the proposed practice in that

it would allow cost-sharing for structures which would be used to impound water, a purpose she felt was not within the goals of the Board. The Board disagreed, pointing out that SWC 3 D.3. requires that the primary purpose of the desired practice must be the control of soil erosion, reduction of sediment delivery, or protection of water quality, giving the district board the responsibility of determining what the "primary purpose" of the proposed structure would be. The Board felt that this procedure constituted an adequate protection against abuse.

The LeSueur County Soil and Water Conservation District (Pub. Ex. 3), and the Waseca County District (Pub. Ex. 4) both pointed out that the proposed rule would require that a minimum of 50% of the contributing drainage area above the proposed project be adequately treated or that treatment was being applied. They suggested that while such requirement was entirely proper in the event of a water impoundment device, imposition of the requirement could raise problems in the case of grade stabilization structures, which are often put at the head of gullies. They suggested that the requirement was appropriate for water impoundment devices to guarantee against sediment filling up the impoundment pond, thus rendering the pond useless for water storage. In the case of gullies, however, sediment would not be allowed to build up, and thus, they argued that there was no purpose in requiring the up-stream treatment. The Board responded to this criticism by acknowledging its validity, and stating that it would continue its present practice of permitting the SCS technician reviewing the proposal to decide whether such a requirement was appropriate. The Board pointed out that the restriction applies to "dams and ponds" and that it would not construe the rules so as to eliminate cost-sharing for grade stabilization devices where the 50% requirement is inappropriate.

The second approved practice (SWC 4 B.) relates to strip-cropping and drew no criticism. It is found to be both needed and reasonable.

The third approved practice (SWC 4 C.) relates to terracing. The Board proposed a minor amendment for paragraph 2, and, at the suggestion of the Ramsey County District, made a change to paragraph 3. Neither change is substantial, and the Board's proposal is both needed and reasonable, either with the two changes or without them.

The fourth proposed practice (SWC 4 D.) relates to diversions, and although it received no criticism, the Board did make two minor amendments. The Board's proposed rule is found to be both needed and reasonable, either with or without the amendments.

The fifth proposed practice (SWC 4 E.) deals with storm water control systems. Again, the Board made some minor changes, none of which are substantial. The Board's proposed rule, either with or without the amendments, is found to be both needed and reasonable.

The next practice (SWC 4 F.) relates to field windbreaks, and it received no comment at the hearings. The Board clarified the second paragraph of the proposal, but either with or without the clarification, the rule is found to be both needed and reasonable.

A substantial amount of criticism was directed at the Board's proposal for a practice relating to animal waste control systems (SWC 4 G.). After stating that a complete system which controls discharge of run-off from animal confinement areas to waters of the state will be required, the rule goes on to prohibit cost-sharing funds for "any costs normally incurred in the management of an animal confinement area", including buildings, yards, pumps, tank wagons, etc. and also prohibits the use of funds for equipment utilized in the handling or transfer of animal wastes. Of particular concern to commentators were pipes and pumps.

For example, the West Ottertail Soil and Water Conservation District submitted a comment (Pub. Ex. 7) urging that pumps and transfer pipes necessary to move manure from the barn to the

storage facility ought to be eligible for cost-sharing if they were parts of a permanently installed system. Jerome Flottemesch testified that both pipes and pumps were allowable in the ASC program, and that to exclude them from state cost-sharing would only result in land occupiers electing a less desirable system solely on economic grounds. During the hearings, the Board proposed an amendment which would permit cost-sharing for pipes "from point of generation to the storage facility", but the Board continued to oppose pumps. In a posthearing submission (Board Ex. 9), the Board pointed out that all practices were required to guarantee a ten-year effective life, and that such an effective life is difficult to foresee for a pump. In addition, the Board pointed out that there were numerous devices other than pumps which would serve the same purpose, and that to allow cost-sharing on pumps, but not such other types of transfer systems, would be discriminatory. Finally, the Board argued that past experience has demonstrated that if cost-sharing is available on other components of an animal waste system, the applicant is usually willing to incur the cost of mechanical devices, such as pumps.

It is found that there is no showing that the exclusion of pumps (or, for that matter, pipes) was unreasonable. Unless it were to result in a frustration of a statutory purpose, the Board has the option of including or excluding such devices as it deems desirable. There was no showing that the exclusion of pumps would frustrate the statutory purpose, and thus, it is found that the Board may exclude them should it so desire.

There was a minor amendment to proposed SWC 4 G.1. suggested by the Board which is found to be insubstantial. The Board's original proposal is both needed and reasonable; the proposed amendment to include pipes is both needed and reasonable. Either with or without the proposed amendment, the entire rule on this practice is found to be both needed and reasonable.

The final proposed practice (SWC 4 H.) deals with planting

of vegetation in so-called "critical areas". The Board's proposal specifically excludes cost-sharing for the planting of trees for wood products. However, at the hearing, a representative of the Department of Natural Resources pointed out that thinning of tree stands was necessary, and expressed a fear that the rule's prohibition might take away an incentive for land occupiers to thin tree stands when necessary. In response to this comment, the Board recommended that the prohibition be modified to indicate that there could be no cost-sharing if the primary goal was to obtain wood products. There were two other minor amendments proposed by the Board to this rule, but the rule is found to be both needed and reasonable, either in its original form, or with the adoption of any of the three amendments.

Proposed SWC 5: Cost-Share Rates

13. There was no negative comment on this rule, and the Ramsey County District did indicate its support for the 75% funding limit proposed by the Board. The rule is found to be both needed and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner hereby makes the following

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Board. All other substantive and procedural requirements of statute have been fulfilled.

2. The Board has demonstrated its statutory authority to adopt the proposed rules.

3. The Board has demonstrated the need for and reasonableness of its proposed rules and amendments.

RECOMMENDATION

The Examiner recommends that the proposed rules be adopted. As noted in the Findings, the amendments to the rules may or may not be made as the Board sees fit.

Dated this 19th day of April, 1978.

Allan W. Klein

ALLAN W. KLEIN
Hearing Examiner

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

In the Matter of Proposed Rules for the Cost-Share Program.

ORDER FOR HEARING

As directed by the Soil and Water Conservation Board at its meeting on January 10, 1978, public hearings on the Board's proposed permanent rules for the cost-share program shall be held at the following dates and places.

March 1, 1978, St. Paul - Capitol Complex area.

March 2, 1978, Marshall - Southwest State University.

March 6, 1978, Detroit Lakes - Department of Transportation District Office.

March 7, 1978, Grand Grapids - Itasca Community College.

Each hearing shall begin at 8:00 p.m. The hearings shall be conducted as a rule hearing according to the rule-making provisions of Minn. Stats., chapter 15, and the rules of the Office of Hearing Examiner.

Dated: January 16, 1978.

STATE OF MINNESOTA
SOIL AND WATER CONSERVATION BOARD

Ronald Nargang acting

VERNON F. REINERT
Executive Director

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

In the Matter of Proposed Rules for the Cost-Share Program.

NOTICE OF HEARING

The Legislature has provided funds to be used to share the cost of implementing systems or practices for erosion control and water quality improvement which are designed to protect and improve the state's soil and water resources. Public hearings on proposed rules for the operation of the cost-share program will be held at the following dates and places.

March 1, 1978, in the conference room of the Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota.

March 2, 1978, in room 217 of the Lecture Center at Southwest State University, Marshall, Minnesota.

March 6, 1978, in the meeting room of the Department of Transportation District Office, 1000 West Highway 10, Detroit Lakes, Minnesota.

March 7, 1978, in the Lecture Hall, room 137 Wilson Hall, Itasca Community College, Route 3, Grand Rapids, Minnesota.

Each hearing will begin at 8:00 p.m.

The proposed rules are authorized and required by Minnesota Statutes, Section 40.036 (1977 Supplement), and will replace emergency rules which have already been promulgated. The rules establish the procedures by which the Soil and Water

Conservation Board allocates cost-share funds to the Soil and Water Conservation Districts. They list which kinds of conservation practices are eligible for cost-sharing. They set the maximum percentage of the cost of a practice that the district can fund. They establish the procedures a land occupier is to follow in applying for cost-sharing, and the standards the District Board is to apply in reviewing and approving or denying the application. They specify the responsibilities of a land occupier to maintain a practice funded under this program.

All interested persons will have an opportunity to participate in the hearings. Statements may be made orally and written materials may be submitted at the hearings. In addition, written materials may be submitted to hearing examiner Myron Greenberg at the Office of Hearing Examiners, 1745 University Avenue, Saint Paul, Minnesota 55104, either before the hearing or within five (5) days after the hearing. The hearing will be conducted as described in Minn. Stat., § 15.0412 and in Minnesota Rules HE 101-109.

A free copy of the proposed rules may be obtained by writing to the Soil and Water Conservation Board, Centennial Building, Saint Paul, Minnesota 55155. Additional copies will be available at the hearings. A "statement of need" explaining why the agency feels the proposed rules are necessary, and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Office of Hearing Examiners twenty-five (25) days before the hearing and will be available there for public inspection.

Please be advised that Minn. Stat., ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rule-making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, phone: (612)-296-5615.

Dated: January 16, 1978.

STATE OF MINNESOTA
SOIL AND WATER CONSERVATION BOARD

VERNON F. REINERT
Executive Director

State of Minnesota)
) ss.
Soil and Water Conservation Board)

In the Matter of Proposed Rules
for the Minnesota Cost-Share
Program.

CERTIFICATE

- - - - - - -

I hereby certify that the attached 487 labels and 3 sheet constitute the complete list of persons, associations, and other interested groups who as of 2:00 o'clock PM, this 17th day of January, 1977, have requested pursuant to Minn. Stat. 1971, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on the subjects captions above.

Joan Anderson Growe
SECRETARY OF STATE
JOAN ANDERSON GROWE

By Cheri L Mathews

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of Proposed Rules for the Cost-Share Program.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF Ramsey)

Mary Jo Meath, being first duly sworn, deposes and says:

That on January 19, 1978, she served the Notice of Hearing about the above-entitled rules by depositing in the United States mail at Saint Paul, Minnesota, a true and correct copy thereof, properly enveloped, and with postage prepaid, addressed to all persons and associations listed on the attached Secretary of State's mailing list.

Mary Jo Meath

Subscribed and sworn to before me
this 2nd day of February, 1978.

Helen A. Alexander
Notary Public, _____ County, MN.
My Commission Expires _____.

HELEN A. ALEXANDER
NOTARY PUBLIC-MINNESOTA
DAKOTA COUNTY
My Comm. Expires Sept. 8, 1983

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Bill Clapp,
Special Assistant
Attorney General
3rd Floor Centennial Building

DATE: July 12, 1978

FROM : Lee E. Sheehy,
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Apparent Improper Publication of the Soil and Conservation Board Rules Relating to the Cost-Share Program in the State Register

It has come to my attention that the above-captioned rules were apparently improperly published as "adopted" in the State Register. See 3 S.R. 19 (July 30, 1978). These rules have not been approved as to form and legality by this office, nor have they been properly filed with the Secretary of State.

While it may be true that these rules have been "proposed for adoption" by the agency, rules do not become "adopted" until all relevant statutory requirements have been met. If the agency only intends to inform the public of its rules proposed for adoption which were submitted to this office, the agency's publication was completely unclear. The agency must publish a clarification/retraction of its earlier publication discussed above; and it must republish when the rules are properly adopted. A copy of this clarification/retraction must be forwarded to this office.

If you have any questions regarding this matter, please do not hesitate to call me.

LES/dw

cc: Carol Anderson Porter, Editor
Office of the State Register

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL
NATURAL RESOURCES

Office Memorandum

TO : LEE SHEEY
Special Assistant Attorney General
Department of Administration

DATE: July 19, 1978

FROM : BILL CLAPP
Special Assistant Attorney General
Department of Natural Resources

PHONE: 6-0691

SUBJECT: Soil & Water Conservation Board Rules for the Cost-Share Program.

The changes to the rules you wanted are incorporated in the enclosed rules (three sets each of a clean final rule and a final rule showing changes from the rule as proposed.)

Also enclosed are three copies of the Board's resolution adopting the rules, and three copies of the minutes of the Board Meeting authorizing staff to proceed with the hearings (see page 4 of the minutes.)

This should do it. Let me know as soon as you know you can file the rule so that the Board can get back to the State Register.

AWC:gvp
encl.

RECEIVED
JUL 20 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Rules

? Clapp call of 6-23-78 ① Bd. Certif. of Resolutions for Orders of Heavy & Adopting

? Guidelines NOT binding per Clapp 6-23-78 ② p.1 SWC 1 (B)(2) - Reference to "guidelines" improper since guidelines should be rules? ~~Not cle~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~District~~

③ p.4, #17 - binds successors of "land occupiers." Asserts juris. over fed. gov't. Successor's due process argmt can be raised. Rule not improper since successor's right unclear.

chg to shall ? ④ p.7 - SWC 2 (B)(4) "may" w/o criteria

chg to "shall" ? ④½ p.10 - (D)(3) "may" grant supplements

chg to "shall" & add criteria ? ⑤ p.12 (F) "may" req. to return surplus funds

will make consistent p.12(G) ⑥ p.12 (G) Incorp. by ref. of "Field Office Technical Guide"?

OR

⑥½ "Construction of practices" Approval by Chief H.E. See State's Exh. #13 "as adopted by the District." see p.11 (D)(7)

But

Typ ⑦ p.13 (3) how does one apply for amendments & on what grounds are they approved.

Sentence ~~Sentence~~ following amendment lang sets out std.

See Getty v. M[illegible] State College Bd.
305 Min 495 — 2 —
235 N.W 2d 594 (1975)
gratitions hearing

? ⑧ p. 14 (I) Appeals - non-APA
hearing ?

SOIL AND WATER CONSERVATION BOARD

January 10, 1978
DNR Conference Room
Centennial Building
St. Paul, Minnesota

The meeting was called to order at 9:15 a.m.

Members present: Leonard Pikal, Armas Yuhala, Clarence Ettesvold, Herbert Bollum, Thomas Schulz, Marylyn Deneen, Roland Abraham, Joseph Sandve, Lyle Smith and Donald Carlson.

Members absent: Arnold Onstad, Robert Falk and William Hueg.

Advisory members present: Harry Major.

Staff members present: Ron Nargang, Vernon Reinert, Steve Pedersen, Greg Larson, Roger Lenzmeier, Richard Ness, Lloyd Wagner and Ruth Dralle.

Others present: Marilyn Lundberg and Jeff St. Ores.

Minutes 12-13-77 **

Moved by Deneen, seconded by Smith, and carried that the minutes of December 13, 1977, be approved as circulated.

Review of Claims

I. Review of claims

1. Compensation and expense claims from appointed members

a. Clarence Ettesvold
October through December, 1977

Compensation	$ 752.50
Expenses	846.76
	$1,599.26

**

Moved by Deneen, seconded by Schulz, and carried to approve this claim of $1,599.26.

b. Herbert Bollum
October through December, 1977

Compensation	$ 175.00
Expenses	183.24
	$ 358.24

**

Moved by Schulz, seconded by Deneen, and carried to approve this claim of $358.24.

c. Marylyn Deneen
September through December, 1977

Compensation	$ 525.00
Expenses	$ 159.57
	$ 684.57

**

Moved by Ettesvold, seconded by Yuhala, and carried to approve this claim of $684.57.

d. Armas Yuhala
October through December, 1977

Compensation	$ 350.00
Expenses	510.52
	$ 860.52

** Moved by Smith, seconded by Carlson, and carried to approve this claim of $860.52.

Telephone Invoices

2. Telephone invoices

a. Telephone service for November and long distance calls for September and October $ 111.77

b. Telephone service for December, long distance calls for November and changeover costs $ 399.09

** Moved by Ettesvold, seconded by Deneen, and carried to approve these invoices in the amounts of $111.77 and $399.09.

Reinert emphasized that the high telephone bill reflected the installation of the new phone system.

Carlson stated that the Bureau of Engineering has been assigned to provide a better environment for the Department of Natural Resources.

II. Correspondence

Falk Resignation **

1. Letter of resignation from Robert Falk. Moved by Deneen, seconded by Smith, and carried that this resignation be accepted. Reinert will write a letter to Falk expressing the Board's sentiments.

Paul Davis-208 Program

2. Letter from Paul Davis, MPCA, acknowledging receipt of the various reports and products and expressing appreciation for the efforts of the Board and their subcontractees.

Water Planning Board

3. Letter from Thomas Kalitowski, Water Planning Board, thanking for assistance provided by Steve Pedersen in the informational meetings. A summary report of these meetings will be available soon.

Environmental Balance Association

** **

4. Letter from David Fradin, Environmental Balance Association, regarding promotion of Federal Environmental Laws Briefing. The Board decided they would like to cooperate with them but neither become a member of their organization nor participate on their panel. Moved by Deneen, seconded by Abraham, and carried that the Board have attendance at the March 29 meeting. Moved by Ettesvold, seconded by Sandve, and carried that the Chairman monitor the meeting and make a report to the Board.

Phillips Legislative Service, Inc. **

5. Letter from Phillips Legislative Service, Inc., regarding services for 1978. Moved by Deneen, seconded by Schulz, and carried to continue our subscription, equally sharing the cost of $265 with MASWCD. A letter to this effect was sent to Robert Wetherbee.

Flitter's Expense Funds

6. Memo from Milt Stenlund advising that Mike Flitter's expense funds, including lodging, have been limited to $200 per month until further notice. Reinert suggested that an account system for the Board Representatives be set up either in the central office or the regional offices some time in the future.

U. of M. Building Additions **

7. Letter from William Hueg and Roland Abraham regarding the State Convention resolution supporting the need for funds for building additions to Departments of Agronomy and Plant Genetics, Soil Science and Plant Pathology at the University of Minnesota. Moved by Ettesvold, seconded by Yuhala, and carried that the Board support this resolution with the legislature.

Soil Conservation Technician Position-Becker County SCS Field Office

8. Letter to Pikal from Becker Soil and Water Conservation District regarding the elimination of the Soil Conservation Technician position in Becker County SCS field office. Major explained that this matter was studied for three years and the district was informed of the outcome as soon as the decision was made. Personnel must be assigned where the workload increases. He advised that the Becker Soil and Water Conservation District review their Memo of Understanding. Reinert will send a response to the district.

III. Soil and Water Conservation Board

Chairman Pikal

Pikal expressed appreciation to the Board for their confidence in him and said that he would try very hard to warrant this faith. He hopes that throughout this year the cooperative spirit and effort will continue so as much as possible can be accomplished. He predicted that, with the cost-share program, 1978 will be one of the busiest years.

1. Old Business

NACD National Convention Delegation ** **

b. Delegation to the NACD National Convention was discussed by the Board. Deneen moved that the policy for the coming years be that the current Chairman, Vice-Chairman, and Executive Director be delegates to the National Convention with expenses paid. This was seconded by Bollum, and carried. Deneen moved that in future years, if the Chairman and Vice-Chairman are unable to attend, the current Chairman designate alternates. This was seconded by Sandve, and carried.

Pedersen Travel Request

3. The Board discussed the out-of-state travel request from Pedersen to attend the Symposium on Technical, Environmental, Socioeconomic and Regulatory Aspects of Coastal Zone

Planning and Management at San Francisco, California, on March 14-16, 1978. Bollum advised the policy has been that decisions such as this concerning the budget be reviewed with the Executive Board. ** Moved by Bollum, seconded by Deneen, and carried that special concerns regarding disbursement of funds be decided by the Executive Director and the Executive Board.

Cost-Share Program

7. Larson reported on the progress of the cost-share program. Sixteen training sessions will be held throughout the state. He distributed the changes in the final draft of the Emergency Rules which were a result of comments received from the Attorney General's office. The revised rules were resubmitted to the state register and are effective on January 30. He suggested that the Board study them and contact him with any questions.

There are some major changes in the Cost-Share Program Rules. ** Moved by Ettesvold, seconded by Abraham, and carried to delete the second sentence in SWC.3, D.7, regarding revision of field office technical guide. ** Moved by Yuhala, seconded by Ettesvold, and carried to amend the policy statement to limit cost-sharing to cost associated with delineation of strips and removal of obstructions.

The question of recording the contract with the county recorder was discussed. Schulz suggested that after two years, the Board make a sample survey to determine the compliance with maintenance.

Larson read the rules with the deletions, changes and additions as recommended by the Interagency Committee. ** The Board reached a consensus on other changes. Moved by Ettesvold, seconded by Schulz, and carried to approve the rules as amended.

The procedures as outlined by Larson are: the document will be submitted to the Bureau of Legal and the state register. After approval, a statement of need will be prepared and hearings approved. At a later date, various agencies will be asked to appear on the hearing panel. After the hearings, the examiner will submit his report. ** Moved by Deneen, seconded by Ettesvold, and carried to approve the procedures.

Public hearings on proposed rules for the operation of the cost-share program will be held at the following dates and places.

March 1, 1978, in the conference room of the Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota.

March 2, 1978, in room 217 of the Lecture Center at Southwest State University, Marshall, Minnesota.

March 6, 1978, in the meeting room of the Department of Transportation District Office, 1000 West Highway 10, Detroit Lakes, Minnesota.

March 7, 1978, in the Lecture Hall, room 137 Wilson Hall, Itasca Community College, Route 3, Grand Rapids, Minnesota.

Each hearing will begin at 8 p.m.

Larson showed several of the cost-share program forms on the screen. Carlson stated that it would not be necessary to add "Department of Natural Resources" to the forms, and suggested placing "SWCB" in the upper left-hand corner with the date. Pikal stated that the staff would be responsible for the completion of these forms.

The meeting recessed for lunch at 12:10 p.m. and reconvened at 12:45 p.m.

DNR Training Center Funds

1. a. Reinert read a memo from Carlson advising that the document indicating the withdrawal of $1,071 from the Soil and Water Conservation Board funds for training purposes, has no validity.

Carlson advised the Board that a contribution will provide an investment for the future in providing the type of training people need. Moved by Carlson, seconded by Deneen, and carried that the Board appropriate funds for the Training Center.

Committees for 1978

2. The Chairman presented the committee assignments for calendar year 1978 (listed below) and stated that the policy the committees will act under will be as follows:

Executive Committee
- Chairman - Leonard Pikal
- Vice-Chairman - Armas Yuhala
- Past Chairman - Clarence Ettesvold

Budget Committee
- Chairman - Armas Yuhala
- Donald Carlson
- Thomas Schulz

Personnel Committee
- Chairman - Marylyn Deneen
- Roland Abraham
- Armas Yuhala
- William Hueg

Legislative Committee
- Chairman - Arnold Onstad
- Marylyn Deneen
- Armas Yuhala
- Clarence Ettesvold

Watershed and Water Quality Committee
Chairman - Herbert Bollum
- Lyle Smith
- Joseph Sandve

Minnesota Association of Soil and Water Conservation Districts Representative - Leonard Pikal

Metropolitan Soil and Water Conservation Districts Representative - Marylyn Deneen

It is a policy that:

A Chairman shall not act as a committee of one unless agreed to by other members of the committee. A notice of a committee meeting shall be sent by the Chairman to other committee members at least five days prior to a meeting except in emergencies.

Any actions taken by a committee must be ratified by the full Board.

There being no objections voiced, the Chairman's recommendations were ratified.

Pikal suggested that much of the material should be handled by the committees and then submitted to the Board for action. Since most of the members arrive the day before the meeting, there would be no additional expense for lodging.

The statutes require that the Board be represented on the Water Planning Board. The Executive Director will continue to serve as the Board's designee. At the next meeting a listing of the duties of the committees will be outlined.

Change in Name Tags

4. A change in name tags that would truly identify the Board was discussed. Deneen will submit a draft of this at the next meeting.

DNR and SWCB Memorandum of Understanding

5. Commissioner Nye has not yet given his comments on the Memorandum of Understanding between the State Board and the Department of Natural Resources. These are expected to be on hand for the next Board meeting.

8. Pedersen presented the following projects for funding:

McCarty Lake Project - Itasca Co. SWCD **

a. McCarty Lake Project in Itasca County Soil and Water Conservation District - lakeshore erosion. The total cost is $9,000, of which $4,500 would come from the State Board funds. Moved by Deneen, seconded by Ettesvold, and carried to approve this project.

8. (Cont.)

Powers Township Project - Cass Co. SWCD **

b. Powers Township Project in Cass County Soil and Water Conservation District - roadside erosion. The total cost is $14,000, of which $7,000 would come from the State Board funds. Moved by Ettesvold, seconded by Bollum, and carried to approve this project.

Middle River Project - Marshall SWCD **

c. Middle River Project in Marshall County Soil and Water Conservation District - streambank stabilization. The total cost is $60,500, of which $30,250.00 would come from the State Board funds. Moved by Deneen, seconded by Yuhala, and carried to approve this project. Bollum voted no.

Culver Amendment to PL 92-500 **

9. Moved by Yuhala, seconded by Sandve, and carried to support the Soil Conservation Service in administering funds through the Culver Amendment to PL 92-500.

President's Reorganization Project **

10. Six alternative proposals were developed by the President's Reorganization Project for Natural Resources. Moved by Bollum, seconded by Deneen, and carried to support Alternative #3 and a letter sent to the Office of Management and Budget indicating the position of the Board.

Alternative #3 reads as follows:

"Set up a Department of Agriculture and Renewable Resources for the management of public and private non-urban land and related renewable resources that now exist in Agriculture, Interior and other agencies. This would bring together such renewable resource management programs to involve forests, range, fish and wildlife, and the conservation of land resources and would span both public and privately owned land resources."

Red River Valley Winter Shows **

11. Dick Ness described the exhibit to be used at the Red River Valley Winter Shows. Moved by Bollum, seconded by Deneen, and carried to appropriate $450 for the exhibit to be used for these shows and other shows afterwards.

Walnut Grove Reservoir

**

12. An invoice in the amount of $4,561.49 for the period from December 1, 1977 to December 31, 1977, for partial payment on Contract #MSWCB 104-101, Walnut Grove Reservoir, was presented for payment. It was moved by Ettesvold, seconded by Sandve, and carried that the Board approve this invoice for payment.

IV. Soil and Water Conservation Districts

Pope SWCD Boundaries **

1. Copies of the resolution passed by the Board of Supervisors removing Rolling Forks Township from District IV to District III, was received in the central office. Moved by Ettesvold, seconded by Deneen, and carried to approve this change.

Position Paper re: Watershed Districts

2. There was discussion on the Position Paper of the Soil and Water Conservation Districts - Their Role in Water Management. Robert Wetherbee had requested that the Soil Conservation Service and the Board jointly give some suggestions on this. Moved by Ettesvold, seconded by Yuhala, and carried to approve the position paper and submit it to the State Association.

**

Water Permit Funds

3. The Board discussed the 1977 allocations to districts for water permits. The total amount was $92,918.

District Employee Survey

4. Reinert advised that a report on the inventory of district staff furnished by state, local, and CETA funds has been sent to Robert Williams, NACD, Washington, D.C.

MASWCD Convention Summary

5. The 1977 Annual Convention Summary disclosed a balance of $400.14.

V. Advisors' Comments

SCS

1. Major requested that the following items be discussed at the next meeting. Memo #1; Memorandum of Understanding; and priority setting for districts to address critical erosion control problems in the state.

The meeting adjourned at 4:35 p.m.

The next regular meeting of the Board will be held on February 14, 1978.

Respectfully submitted,

Vernon F. Reinert
Executive Director

ADMIN. [illegible]

DEPARTMENT [illegible]

STATE OF MINNESOTA

Office Memorandum

TO : 431 [illegible],
Special Assistant
Attorney General
3rd Floor Capitol Building

DATE: July 12, 1973

FROM : Lee T. Cheely,
Special Assistant
Attorney General

PHONE: 296-1232

SUBJECT: Apparent Improper Publication of the Soil and Conservation Board Rules Relating to the Cost-Share Program in the State Register

It has come to my attention that the above-captioned rules were apparently improperly published as "adopted" in the State Register. See 3 S.R. 19 (July 30, 1973). These rules have not been approved as to form and legality by this office, nor have they been properly filed with the Secretary of State.

While it may be true that these rules have been "proposed for adoption" by the agency, rules do not become "adopted" until all relevant statutory requirements have been met. If the agency only intends to inform the public of its rules proposed for adoption which were submitted to this office, the agency's publication was completely unclear. The agency must publish a clarification/retraction of its earlier publication discussed above; and it must republish when the rules are properly adopted. A copy of this clarification/retraction must be forwarded to this office.

If you have any questions regarding this matter, please do not hesitate to call me.

LTC/dw

cc: Carol Anderson Porter, Editor
Office of the State Register

#431 Natural Resources

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/2 Temporary Rule —

Resubmitted and Received 6/20

DUE DATE 6/22 Oral Return to Agency on 6/14.

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable [redacted].
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable [redacted]
13. Order Adopting ✓ (Delegation Order?)
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A
17. Petition by Public, where applicable N.A.

Attorney General

Bill Clapp
Special Assistant
Attorney General

July 25, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

Rules as Approved - Soil and Water Conservation Board
Cost Share Program

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

Two final matters deserve comment. First, SWC 3(I) is approved based on the agency's argument that the hearing provided therein is merely gratituous, and, therefore, not required to be conducted pursuant to Minn. Stat. Chap. 15. The agency cited Setty v. Minn. State College Bd., 305 Minn. 495, 235 N.W.2d 594 (1975). However, this approval shall not bind any subsequent judicial or legislative review of this issue. Secondly, the agency has failed to provide me with a copy of the clarification/retraction which I requested in my memorandum of July 12, 1978, to you. This clarification/ retraction must be published prior to or simultaneously to the publication of the attached rules which have only now been adopted.

If you have any questions in this regard, please contact me.

LES:mb

Enclosure

Soil and Water Conservation Board

Adopted Rules for the Cost-Share Program

SWC 1 Authority, scope, definitions

A. Authority and scope. Minn. Stat. ch. 40 authorizes the State Soil and Water Conservation Board, in cooperation with the Soil and Water Conservation Districts, to administer a program of cost-sharing with land occupiers on the installation of soil and water conservation practices. These rules provide procedures and criteria to be followed by the State Board in allocating cost-sharing funds to districts, and standards and guidelines which the District Boards shall include in all cost-sharing contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. "Land occupier" means any person, firm, or corporation, including the governments of this state and any subdivision, agency or instrumentality, corporate or otherwise, of

the government of the state, who shall be in possession of, any lands lying within a district organized under the provisions of ch. 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

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

19. "Program plan" means a statewide plan developed by the State Board, in consultation with the districts and appropriate agencies, for control of the soil and water conservation problems in the state.

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

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

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

23. "Stream" means a well defined channel or bed that has water in it at some time of the year under normal conditions. This includes natural perennial and 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 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 Minn. Stat. ch. 15.

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

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

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

c. They must be non-production practices.

3. The maximum cost-share rates established by the state board represent the maximum per cent of the total cost of a

practice that may be funded by state cost-share funds. Where state and federal funds are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.

B. Allocation of funds.

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

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

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

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

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

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

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

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

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

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

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

3. Prior to considering any applications from land occupiers for cost-share assistance, the District Board shall establish the cost-share rates for practices to be installed under the program, which shall not exceed the maximum rates established by the State Board. This decision shall be based on the following factors:

a. advice of technical experts familiar with the district;

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

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

d. cost-share funds available.

C. Application for funds by land occupiers.

1. Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the State Board and available from the district office. Each application shall be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the fiscal year beginning July 1. After initial screening by the District Board, assigned

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

2. A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project provided that all of the land occupiers are eligible as individuals and the practice or practices satisfy the criteria of the program. The land occupiers must reach agreement on the division of payments. The group spokesperson shall be identified on the application and shall file the form with the district, and shall negotiate with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

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

D. Criteria for District Board review.

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

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

3. The primary purpose of the desired practice must be the control of soil erosion, reduction of sediment delivery,

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

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

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

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

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

E. District approval. The District Board shall either approve or deny the application. If approved, the District Board shall instruct the chairman or acting chairman to sign the application. Once signed, the application becomes the contract between the district and land occupier and serves as

the authorization for work to proceed on the practice. If denied, the District Board shall notify the land occupier in writing within 30 days after board action, of the reason for denial of the application. Changes in any provisions of the contract shall be subject to review and approval of the District Board.

F. District records. The district shall maintain a current ledger of all cost-share contracts on forms provided by the State Board. The ledger shall specify the land occupiers with whom the district has contracted, the practices involved, status of construction and a total of funds encumbered. The district shall monitor all cost-sharing contracts to insure compliance with the provisions of SWC 3 B. 2. Districts having funds which are unencumbered by December 1 of each program period shall be required to return those funds to the State Board for reallocation, if the State Board has determined the funds are of significant amount and there is another district that has greater need for them.

G. Payments.

1. Construction of practices shall be monitored by the District Board to insure compliance with the specifications in the Field Office Technical Guide. Upon completion, assigned S. C. S. personnel shall certify whether or not the practice has been satisfactorily performed, including a certification

that the practice meets the requirements of the Field Office Technical Guide. No such certification shall be made until all specifications have been satisfied. Upon certification of completion, the land occupier shall contact the district for payment and shall present all receipts for cost of the practice.

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

3. In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share agreement has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the practice units and/or estimated cost, or to postpone the completion date of the practice. Such changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share agreement covering the changes. Where the actual cost is less than the estimated cost the district shall only share the approved percentage of the actual cost of the practice. The District Board shall review the receipts provided by the land occupier to determine the actual

cost of the practice. When the district determines, that all claims are practical and reasonable, they shall authorize issuance of a check for the district share of the practice. Where the District Board determines that certain claims are not justified they shall notify the land occupier in writing of the unjustified claims within 30 days. The District Board shall then authorize the issuance of a check for the district share of the justified claims.

H. Maintenance. The land occupier is responsible for operation and maintenance of practices applied under this program. Should the land occupier fail to maintain such practices or willfully remove them during their effective life, the land occupier shall be liable for the amount of financial assistance received for their installation. The District Board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier shall not be held liable for cost-share assistance received provided the failure was caused by reasons beyond the land occupiers control, or if soil and water conservation practices are applied which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

I. Appeals. In cases where a land occupier feels he has been treated unfairly, he may request that the District Board review its decision. Should the land occupier and District Board reach an impasse, the land occupier may petition in writing for a hearing before the State Soil and Water Conservation Board. If it grants the hearing, which shall be informal, the State Board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for 10 days after the hearing. The referee, if used, shall report his findings and recommendation to the State Board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the District Board.

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

SWC 4 Approved practices.

A. Erosion control structures.

1. Definition: A structure such as, but not limited to, grade stabilization structures, floodwater retarding structures and multipurpose dams to (1) stabilize the grade or control head-cutting in natural or artificial channels; (2) provide temporary storage of floodwater; (3) control release rate providing downstream channel stability; or (4) impound water.

2. Purpose: To control soil erosion and sediment.

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

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

4. Policies:

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

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

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

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

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

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

B. Stripcropping

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

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

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

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

C. Terraces

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

2. Purpose: Terraces are constructed to:

a. reduce erosion;

b. reduce sediment content in runoff water;

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

d. prevent gully development;

e. reduce flooding.

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

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

4. Policies:

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

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

D. Diversions

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

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

3. Applicability: This practice applies to sites where:

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

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

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

4. Policies:

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

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

E. Stormwater control systems

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

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

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

4. Policies:

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

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

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

F. Field windbreaks

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

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

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

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

G. Animal waste control systems

1. Definition: A planned agricultural waste management system to contain and manage liquid and solid wastes including runoff from concentrated animal waste areas with ultimate disposal in a manner which does not degrade air, soil or water resources.

This practice includes systems for safe disposal of livestock wastes through use of soil and plants.

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

3. Applicability:

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

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

4. Policies:

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

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

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

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

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

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

g. A holding tank which will become an integral part of a building is eligible for cost-sharing provided there is no other feasible alternative available for controlling pollution. The District Board, with technical review completed by technicians available to them, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

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

H. Critical area stabilization

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

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

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

4. Policies:

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

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

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.

APPROVED AS TO FORM AND LEGALITY

JUL. 25 1978 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Lee E Shelby

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
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Joan Anderson Growe
Secretary of State
9:08 AM

Final Rules showing chgs.

STATE OF MINNESOTA

SOIL AND WATER CONSERVATION BOARD

COST-SHARE PROGRAM RULES

SWC 1. Authority, Scope, Definitions.

A. AUTHORITY AND SCOPE

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

B. DEFINITIONS

For purposes of these rules, the following definitions in addition to those in Chapter 40, shall apply:

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

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

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

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

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

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

7. "Comprehensive plan" means a long-range plan prepared by the district pursuant to Minnesota Statutes, Section 40.07, Subdivision 9.

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

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

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

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

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

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

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

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

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

~~17. "Land occupier" means any person, firm, or corporation 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, including, during the life of a practice, successors of a land occupier who received a cost-share payment.~~

17. "Land occupier" means any person, firm, or corporation, including the governments of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of the state, who shall be in possession of, any lands lying within a district organized under the provisions of Chapter 40, whether as owner, lessee, renter, tenant, or otherwise, including, during the life of a practice, successors of a land occupier who received a cost-share payment. This definition also includes the federal government.

18. "Non-production practice" means a soil and water conservation practice which is installed or applied to control soil erosion, reduce sediment yield, or protect water quality.

Practices installed or applied primarily to bring land into production or to increase the short term productivity are excluded.

19. "Program plan" means a statewide plan developed by the State Board, in consultation with the districts and appropriate agencies, for control of the soil and water conservation problems in the state.

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

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

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

23. "Stream" means a well defined channel or bed that has water in it at some time of the year under normal conditions. This includes natural perennial and 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 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~~ or protection of water quality.

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

c. They must be non-production practices.

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

B. ALLOCATION OF FUNDS

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

2. Before the State Board can allocate cost-share funds to a district, it must first receive the district's annual

application for cost-share funds. The application shall be made on forms provided by the State Board and received by the State Board by January 1. The application must be accompanied by the district's annual plan.

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

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

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

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

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

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

C. MONITORING

For the purpose of monitoring the progress of the program and utilization of funds, the State Board shall receive from each district quarterly reports by October 15, January 15, and April 15, and an annual report of the year's accomplishments by July 15. The State Board may require such additional

special reports as may be deemed necessary by the State Board to monitor the cost-sharing program. The reports shall be on forms provided by the State Board.

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 funds from the State Board, the respective districts shall be 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 funds within the rules established herein.

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

3. Prior to considering any applications from land occupiers for cost-share assistance, the District Board shall establish the cost-share rates for practices to be installed under the program, which shall not exceed the maximum rates established by the State Board. This decision shall be based on the following factors:

a. Advice of technical experts familiar with the district;

b. Cost-share rates currently in 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' comprehensive and annual plans; and

d. Cost-share funds available.

C. APPLICATION FOR FUNDS BY LAND OCCUPIERS

1. Land occupiers seeking assistance under this program shall apply to the districts on forms provided by the State Board and available from the district office. Each application shall be filled out in its entirety. The application must be signed by the land occupier and if the land occupier is not the owner it must also bear the owner's signature. Applications must be submitted not later than June 1 to be considered for cost-sharing from the funds available for the fiscal year beginning July 1. After initial screening by the District Board, assigned S. C. S. personnel shall be responsible for making a determination of need and cost estimate. Actual determination of need may be done by the District Technician. Additional information on the desired practice which may be required by the District Board in their consideration of the application, shall be included.

2. A situation may arise where the cooperation of several land occupiers is required to solve a conservation problem. The district may share the cost of such a group project provided that all of the land occupiers are eligible as individuals and the practice or practices satisfy the criteria of the program. The land occupiers must reach agreement on the division of payments. The group spokesperson shall be identified on the application and shall file the form with the district, and shall negotiate with the district. Checks for the district share of the practice shall be issued to the group members based on the division of payment plan prepared by the group.

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

D. CRITERIA FOR DISTRICT BOARD REVIEW

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

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

3. The primary purpose of the desired practice must be the control of soil erosion, reduction of sediment delivery, or protection of water quality. In cases where the "primary purpose" is questionable, the District Board shall make a determination of the acceptability of the application. Additionally, the District Board shall make determination of the need for supplemental practices to protect any practice

installed under this program, e.g., fencing of water impoundment structures. If the District Board determines that supplemental practices are necessary, they 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 shall be responsible for operation and maintenance of practices applied under this program.

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

7. The practice must comply with the specifications of the Field Office Technical Guide of the USDA-Soil Conservation Service as adopted by the Soil and Water Conservation Districts.

E. DISTRICT APPROVAL

The District Board shall either approve or deny the application. If approved, the District Board shall instruct the Chairman or acting Chairman to sign the application. Once signed, the application becomes the contract between

the district and land occupier and serves as the authorization for work to proceed on the practice. If denied, the District Board shall notify the land occupier in writing within 30 days after board action, of the reason for denial of the application. Changes in any provisions of the contract shall be subject to review and approval of the District Board.

F. DISTRICT RECORDS

The district shall maintain a current ledger of all cost-share contracts on forms provided by the State Board. The ledger shall specify the land occupiers with whom the district has contracted, the practices involved, status of construction and a total of funds encumbered. The district shall monitor all cost-sharing contracts to insure compliance with the provisions of SWC 3,B.2. Districts having funds which are unencumbered by December 1 of each program period 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 Board to insure compliance with the specifications in the Field Office Technical Guide. Upon completion, assigned S. C. S. personnel shall certify whether or not the practice has been satisfactorily performed, including a certification that the practice meets the requirements of the Field Office

Technical Guide. No such certification shall be made until all specifications have been satisfied. Upon certification of completion, the land occupier shall contact the district for payment and shall present all receipts for cost of the practice.

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

3. In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the approved percentage of the estimated cost, except when an amendment to the cost-share agreement has been approved. Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to increase the practice units and/or estimated cost, or to postpone the completion date of the practice. Such changes must be approved by the supervisors in advance of completion of the work with an amendment to the cost-share agreement covering the changes. Where the actual cost is less than the estimated cost the district shall only share the approved percentage of the actual cost of the practice. The District Board shall review the receipts provided by the land occupier to determine the actual cost of the practice. When the district determines that all

claims are practical and reasonable, they shall authorize issuance of a check for the district share of the practice. Where the District Board determines that certain claims are not justified they shall notify the land occupier in writing of the unjustified claims within 30 days. The District Board shall then authorize the issuance of a check for the district share of the justified claims.

H. MAINTENANCE

The land occupier is responsible for operation and maintenance of practices applied under this program. Should the land occupier fail to maintain such practices or willfully remove them during their effective life, the land occupier shall be liable for the amount of financial assistance received for their installation. The District Board may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice. The land occupier shall not be held liable for cost-share assistance received provided the failure was caused by reasons beyond the land occupiers control, or if soil and water conservation practices are applied which provide equivalent protection of the soil and water resources. In no case shall a district provide cost-share assistance to a land occupier for the reapplication of practices which were removed by the land occupier during their effective life or failed due to improper maintenance.

I. APPEALS

In cases where a land occupier feels he has been treated unfairly, he may request that the District Board review its decision. Should the land occupier and District Board reach an impasse, the land occupier may petition in writing for a hearing before the State Soil and Water Conservation Board. If it grants the hearing, which shall be informal, the State Board or a referee appointed by it shall hear all testimony offered, and shall accept written testimony for 10 days after the hearing. The referee, if used, shall report his findings and recommendation to the State Board, which shall within 60 days of the hearing date make its decision on the appeal, upholding, reversing, or amending the decision of the District Board.

J. REPORTS TO STATE BOARD

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

SWC 4. Approved Practices.

A. EROSION CONTROL STRUCTURES

1. Definition: A structure such as, but not limited to, grade stabilization structures, floodwater retarding structures and multipurpose dams to (1) stabilize the grade or control head-cutting in natural or artificial channels; (2) provide

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

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

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

4. Policies:

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

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

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

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

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

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

B. STRIPCROPPING

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

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

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

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

C. TERRACES

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

2. Purpose: Terraces are constructed to:

~~a.~~ ~~reduce slope length;~~

~~b~~a. reduce erosion;

~~c~~b. reduce sediment content in runoff water;

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

~~e.~~ ~~retain runoff for moisture conservation;~~

~~f~~d. prevent gully development;

~~g.~~ ~~re-form the land surface; and~~

~~h~~e. reduce flooding.

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

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

~~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;~~

4. Policies:

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

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

D. DIVERSIONS

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

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

3. Applicability: This practice applies to sites where:

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

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

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

4. Policies:

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

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

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

E. STORMWATER CONTROL SYSTEMS

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

2. Purpose: The purpose of this system of elements is to provide a means of regulating and/or removing runoff to protect the area from flood damage and erosion, and to prevent pollution of watersheds, lakes and streams. ~~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 control system. Such practices shall include, but are not limited to: channel lining, chutes, drop spillways, vegetative filter strips, protective outlets, sod waterways, permanent sod cover, fencing and permanent vegetation including trees, shrubs and grasses. ~~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.~~ stormwater control systems.

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

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.~~ wind erosion. Additional benefits may be

gained from: the protection of crops, livestock, and wildlife; increased moisture conservation by controlling snow deposition; and to beautify and otherwise enhance the landscape.

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

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

G. ANIMAL WASTE CONTROL SYSTEMS

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

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

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

4. Policies:

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

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

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

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

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

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

g. A holding tank which will become an integral part of a building is eligible for cost-sharing provided there is no other feasible alternative available for controlling pollution. The District Board, with technical review completed by technicians available to them, shall make the final decision concerning the cost-sharing eligibility of such a system. For purposes of determining the cost-share payment, the cost of the building foundation and the cost of the building is not eligible for cost-sharing. The cost attributable to the foundation shall be represented by the top four feet of the storage tank walls.

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

H. CRITICAL AREA STABILIZATION

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

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

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

4. Policies:

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

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

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.