

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1314

Docket No. 05.0009.0986

DATE RECEIVED 9/15
REVIEW DATE 9/24
DUE DATE 9/29

APPROVED 9-29-86 mjC
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED 9/16
REVISOR DISAPPROVED
FILED W/SEC. STATE 9/30
RETURNED TO AGENCY 10/1

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
June 24, 1985 Date published in State Register
~~18~~ 24 Comments

___ ~~Petition for Adoption of a~~ Rule

✓ Board's Authorizing Resolution

✓ Proposed rule
Craig Lindeke 3/7/86 Revisor's Certificate

✓ Notice of Intent to Adopt Rule
40.21 Statutory Authority ok
yes Small business statement
none Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
April 9, 1986 Date 30/25 days before adoption

✓ Publication in State Register
April 14, 1986 Date 30/25 days before adoption

✓ Resolution Adopting

✓✓ Findings of Fact, Conclusions & Order Adopting
Sept 15, 1986 Date

24 ~~18~~ Written requests, submissions or comments

✓ Declaration of attorney
Jon Murphy Name of SAAG representing agency

___ ~~Notice of Submission to Attorney General~~

___ ~~Affidavit of Mailing Notice to Attorney General~~

✓ Order of Notice of Intent to Adopt Rules
✓ certificate

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: CAROL MILLIGAN, Management Analyst
Planning Division

DATE: 10/1/86

ATTN: JON MURPHY
Special Assistant Attorney General

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: Adopted Rules Relating to Excessive Soil Loss Control

The above-referenced rule has been approved as to its legality by the Attorney General on September 29, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC/rmk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR#1314

Department of Agriculture

Adopted Rules Relating to Excessive Soil Loss Control

Rules as adopted

8400.4000 GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 8400.4000 to 8400.4080 is to reduce the amount of soil erosion on Minnesota land. The benefits of the local adoption of parts 8400.4000 to 8400.4080 include decreasing the amount of off-site damages from sediment, retaining the productivity of the soil, and improving water quality.

Subp. 2. **Policy.** Parts 8400.4000 to 8400.4080 are adopted in accordance with Minnesota Statutes, sections 40.19 to 40.28 and apply to all activities which cause excessive soil loss.

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

Subp. 4. **Voluntary adoption.** A local government of a county, home rule charter or statutory city, or town with the authority to adopt and administer an ordinance may choose to adopt and administer soil loss limits. Parts 8400.4000 to 8400.4080 are only applicable if the local government adopts a soil loss limits ordinance under Minnesota Statutes, sections 40.19 to 40.28.

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

8400.4002 DEFINITIONS.

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

Subp. 2. **Agricultural use.** "Agricultural use" means the

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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

Subp. 3. **Board.** "Board" means the state Soil and Water Conservation Board created under Minnesota Statutes, chapter 40.

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

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

Subp. ~~5.~~ 6. **Conservation practice.** "Conservation practice" means a practice containing a definition, purpose, conditions under which the practice is applied including design requirements, and specifications containing a statement of details required for installing a conservation practice, including necessary kinds, quality, and quantity of work and materials. A conservation practice may be a permanent or temporary, vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion and sedimentation. "Conservation practices" may be used in a development activity area or an agricultural area. Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, stripcropping, water and sediment control basins, and other permanent practices approved by the board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, fabric filter barriers, filter strips, stormwater inlet and outlet protection, and any other cultural

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

practices approved by the board. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

Subp. ~~6.~~ 7. **Development activity.** "Development activity" means a physical disturbance, excluding agricultural use, of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining, and filling lands. Federal, state, county, and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.

Subp. ~~7.~~ 8. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. ~~8.~~ 9. **Erosion.** "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of man or nature.

Subp. ~~9.~~ 10. **Excessive soil loss.** "Excessive soil loss" means soil loss that is greater than the soil loss limit. ~~"Excessive soil loss" may be evidenced by~~ or which causes sedimentation on adjoining land or in a body of water, watercourse, or wetland.

Subp. ~~10.~~ 11. **Field office technical guide.** "Field office technical guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be ~~measured~~ estimated, and conservation practice standards and specifications required in the application of soil and water conservation practices.

Subp. ~~11.~~ 12. **Land occupier.** "Land occupier" means a person, firm, corporation, municipality, or other legal entity that owns or possesses land as owner, lessee, renter, tenant, or otherwise. The terms include both the owner and the occupier of

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the land if they are not the same.

Subp. ~~12.~~ 13. **Local government.** "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include a soil and water conservation district, water management organization, joint power board, watershed district, or other governmental entity responsible for resource management within the affected jurisdiction.

Subp. ~~13.~~ 14. **Sediment.** "Sediment" means solid mineral or organic material that is in suspension or motion, being transported or has been moved from its original site by air, water, gravity, or ice.

Subp. ~~14.~~ 15. **Sedimentation.** "Sedimentation" means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.

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

Subp. ~~15.~~ 17. **Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

Subp. ~~16.~~ 18. **Soil loss limits.** "Soil loss limits" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. The local soil loss limits ordinance must use the soil loss tolerance for each soil series described in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county, whichever is more current.

Subp. ~~17.~~ 19. **Soil loss tolerance.** "Soil loss tolerance" means the maximum rate of annual soil erosion that will permit crop productivity to be sustained economically and

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

indefinitely. In Minnesota, "soil loss tolerance" ranges from one to five tons per acre per year depending on the particular soil characteristics. "Soil loss tolerance" values for Minnesota soil series are provided in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county.

8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, a local government may adopt soil loss limits which meet the minimum standards and criteria for soil loss, and once adopted shall administer and enforce the soil loss limits ordinance.

8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, districts shall:

A. provide assistance to local governments in determining whether excessive soil loss is occurring;

B. provide assistance to the land occupiers in developing a conservation plan and time schedule ~~with suggested~~ suggesting conservation practices and a time schedule for their application ~~of the best practicable conservation practices~~; and

C. make available to land occupiers state cost-share funds as provided by parts 8400.4045 and 8400.4060;

D. provide assistance to local governments in the development, review, monitoring, and enforcement of local soil loss limits ordinances, conservation plans, and time schedules, and sedimentation control plans and time schedules; and

E. provide assistance to the commissioner in the development and review of additional adequate technical information.

8400.4015 COMMISSIONER'S DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, the commissioner of agriculture shall:

A. establish statewide standards reviewed every five

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

years, for the management of land to prevent excessive soil loss from occurring;

B. upon request, assist the local government in the drafting of a soil loss limits ordinance which meets the provisions of Minnesota Statutes, sections 40.19 to 40.28 and parts 8400.4000 to 8400.4080 which assistance includes, but is not limited to, creation of specific guidelines to be used locally in the formulation of reasonable regulations and other conservation practices based on sound technical data and consistent with statewide standards and community land use needs;

C. where sufficient information is not available, cooperate to the fullest extent with appropriate federal, state, and local governments in securing adequate technical information;

D. periodically review and upgrade soil loss limits criteria based on new technical methodologies;

E. disseminate to the local government, whenever available, technical information including information of federal, state, and local programs, educational materials and other material useful in carrying out a soil loss limits program; and

F. coordinate federal, state, and local soil loss limits activities in the state.

8400.4025 MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS ORDINANCES.

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

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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

advise of local, state, and federal agencies.

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

A. stabilization of denuded areas and soil stockpiles;

B. establishment of permanent vegetation;

C. protection of adjacent properties;

D. timing and stablilization of sediment trapping measures;

E. sediment basins;

F. stabilization of cut and fill slopes;

G. stabilization of watercourses;

H. stabilization of construction access routes;

I. disposition of all temporary measures; and

J. maintenance of all temporary and permanent urban conservation practices.

Subp. ~~3.~~ 4. **Model ordinances.** The model ordinances incorporated by reference in part 8400.4080 are the minimum standards for the adoption or amendment of soil loss limits under Minnesota Statutes, sections 40.19 to 40.28. A local government may adopt soil loss limits which are stricter than the model ordinances.

8400.4030 PROHIBITED ACTIVITIES.

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

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

A. if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

B. if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

due to overgrazing or cattle paths; ~~and~~

C. if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss; and

D. if a body of water, watercourse, or wetland is located within an agricultural use area, wooded or open land used for pasture, or a wooded area used for timber harvest, ensure that proper management and conservation practices are being applied to the surrounding land.

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

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

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

8400.4037 PROCEDURE FOR DEVELOPMENT ACTIVITY.

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

Subp. 2. **Specification of methods.** A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

during the construction process. ~~These methods~~ A sedimentation control plan and time schedule must address the items in part 8400.4025, subpart 3. Urban conservation practices in a sedimentation plan may include, but are not limited to, the use of temporary seeding, fabric fiber ~~mats~~ barriers, plastic, straw mulch, sediment control basins, or other ~~measures~~ conservation practices adequate to prevent erosion and sediment damage.

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

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

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

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

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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

plan and time schedule must be resubmitted for approval before the development activity begins.

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

8400.4040 PROCEDURE FOR AGRICULTURAL ACTIVITIES.

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

The signed written complaint must include:

A. the name and address of the alleged offending land occupier;

B. the location of the tract of land with the alleged excessive soil loss;

C. other land or water that is allegedly being affected by the excessive soil loss; and

D. a description of the nature of the alleged excessive soil loss and resulting sedimentation.

Subp. 2. **Determination.** Upon request by the local government, the district shall determine the average annual soil loss in tons per acre per year of the tract of land cited in the complaint. The district may enter public or private land to make an inspection for the determination of soil loss or to

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

complete the report. The district shall notify the land occupier of the time of the inspections and give the land occupier an opportunity to be present when the inspection is made.

The notice must:

A. be given ten days prior to the date of the inspection;

B. be delivered either by personal service or certified mail; and

C. if the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.

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

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

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

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

A. describe the land and state the extent to which soil loss exceeds the soil loss limits;

B. be delivered within ten days of the local government's decision;

C. be delivered either by personal service or by certified mail; and

D. state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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

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

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

8400.4045 COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.

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

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

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

8400.4050 PENALTY.

If a land occupier does not comply with the provisions of the notification or mediated written agreement, the land

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

occupier is subject to a civil penalty up to $500.

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

8400.4055 HEARING PROCEDURE.

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

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

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

8400.4060 COST-SHARE FUNDS FOR A COURT ORDER.

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

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

The method of application and eligibility requirements for state cost-share funds must follow parts 8400.0100 to

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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

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

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

8400.4065 PENALTY.

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

8400.4070 ESTABLISHMENT OF COST-SHARE FUNDS.

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

The priority cost-share assistance contract, prepared by the commissioner of agriculture, is incorporated by reference. This document is subject to frequent change and is available at the state law library.

8400.4075 VARIANCES.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

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

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

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

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

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

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

Subp. ~~2.~~ 3. **Decision.** Local government variance requests must be submitted to the board at least 30 days prior to the board meeting at which the variance is to considered. Within 45 days after the meeting, the board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance may not be granted if it is in conflict with any statute.

Subp. ~~3.~~ 4. **Modifications.** If a variance has been granted by the board, the local government holding the variance may file with the board, at any time, a written request for modification or amendment of the variance. The request for modification or amendment and the board's consideration of the request must comply with this part.

8400.4080 MODEL ORDINANCE.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

The model ordinance, prepared by the commissioner of agriculture, in consultation with counties, districts, and other appropriate agencies, pursuant to Minnesota Statutes, section 40.21, subdivision 1, is incorporated by reference. That document may be subject to change and is available at the state law library.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 30 1986
Joan Anderson Growe
Secretary of State
3:18 PM

APPROVED AS TO FORM AND LEGALITY
September 29 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M J Carsley
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Agriculture
Soil and Water Conservation Board

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Soil Loss Limits, Minnesota Statutes, Chapter 40.

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing rules governing soil loss limits. The adoption of these rules is authorized by Minnesota Statutes, section 40.21, which requires the department to adopt rules to serve as a guide to local governments to enact ordinances to prevent excessive soil loss.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Mr. Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by July 19, 1985. Any written material received by the Department shall become part of the rulemaking record.

June 12, 1985

Jim Nichols
Commissioner

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration Cable Communications Board

Applications Accepted for Designation of an Organization as the Regional Channel Entity

As authorized by Minnesota Statutes 238.05, Subd. 2 (c) and (d), the Cable Board will designate an entity to schedule programs and facilitate use of the uniform regional channel to be seen on VHF Channel 6 on cable systems in the Twin Cities Metropolitan Area.

The Board expects to confer designation at a special meeting to be held on Friday, June 28, 1985 at 10:00 a.m. at 500 Rice Street in Saint Paul.

On June 14, 1985, the Cable Board unanimously adopted the following preparatory motion:

WHEREAS, it is the desire of the Minnesota Cable Communications Board to fulfill its charge, as found in the Minnesota Statutes authorizing the Board, to encourage and to approve an entity as the Regional Channel Entity,

NOW, THEREFORE, be it resolved that interested persons be encouraged to organize a Minnesota nonprofit corporation which is encouraged to apply, along with any other applicant, to the Minnesota Cable Communications Board for designation as the Regional Channel Entity at its meeting on June 28, 1985,

FURTHER RESOLVED, that in order to follow the spirit of the Regional Channel Committee formed by the MCCB, individuals in the following categories are encouraged to be the organizers and members of the first Board of Directors of the nonprofit corporation:

Association of Metropolitan Municipalities (2)

Minnesota Cable Communications Association (1)

Metropolitan Council (1)

Higher Education Coordinating Board (1)

Minnesota Board of Education (1)

Metronet (Libraries) (1)

General Public (6).

The Board will consider other applications for Regional Channel Entity designation at or before the June 28, 1985 meeting. Applications or questions should be directed to:

W. D. Donaldson, Executive Director
Minnesota Cable Communications Board
500 Rice Street
Saint Paul, MN 55103
Telephone: (612) 296-2545.

Department of Agriculture Soil and Water Conservation Board

Outside Opinion Sought Regarding Proposed Rules Governing Soil Loss Limits

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing rules governing soil loss limits. The adoption of these rules is authorized by Minnesota Statutes, section 40.21, which requires the department to adopt rules to serve as a guide to local governments to enact ordinances to prevent excessive soil loss.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Mr. Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by July 19, 1985. Any written material received by the Department shall become part of the rulemaking record.

June 16, 1985

Jim Nichols
Commissioner

Department of Health

Emergency Medical Services Licensure Application—La Crosse Area

As of June 24, 1985 a complete application for a change in licensure from Basic Life Support to Advanced Life Support Transportation Service and expansion of primary service area was submitted by Tri-State Ambulance Service to operate from a base of operation in LaCrosse, Wisconsin.

This notice is given pursuant to Minnesota Statutes 1979, Section 144.802, which requires in part that the Commissioner of Health publish the notice at the applicant's expense in the *State Register*.

Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the State Health Planning Agency, 100 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, Attn: John Dilley. The comments must reach the Health Systems Agency before July 24, 1985 or be submitted at the public hearing.

After a public hearing has been held, the Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the recommendation to the Commissioner of Health, the Commissioner shall grant or deny the license to the applicant.

Department of Human Services
Health Care Programs Division

Public Notice Regarding Changes in Minnesota's Medical Assistance Program

Notice is hereby given to all providers and recipients of Minnesota Medical Assistance, and to the public, of changes in the levels of reimbursement for Medical Assistance services. These changes are anticipated to be required by laws enacted by the Minnesota State Legislature during the 1985 session. The applicable sections of the legislation may be viewed at your county welfare or social services department.

The purpose of these changes is to ensure that services are available to Medical Assistance recipients to the same extent that the services are available to the general population.

Written comments on the changes may be sent to and reviewed by the public at:

Health Care Programs Professional Services Section
2nd Floor, Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Wally Berhardson, do hereby certify that I am a member and the Chairman of the Board of Soil and Water Conservation, 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 Board of Soil and Water Conservation duly and properly called and held on the 11th day of February, 1986, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Ron Nargang, Director of the Board of Soil and Water Conservation, be and he hereby is granted the authority and directed to sign an Order of the Board directing that Notice by given of the Board's intent to adopt without a public hearing rules governing Control of Excessive Soil Loss to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of February, 1986.

Wally Berhardson
Chairman of the Board

Attest by one other Board Member

Department of Agriculture

Proposed Rules Relating to Excessive Soil Loss Control

Rules as proposed (all new material)

8400.4000 GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 8400.4000 to 8400.4080 is to reduce the amount of soil erosion on Minnesota land. The benefits of the local adoption of parts 8400.4000 to 8400.4080 include decreasing the amount of off-site damages from sediment, retaining the productivity of the soil, and improving water quality.

Subp. 2. **Policy.** Parts 8400.4000 to 8400.4080 are adopted in accordance with Minnesota Statutes, sections 40.19 to 40.28 and apply to all activities which cause excessive soil loss.

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

Subp. 4. **Voluntary adoption.** A local government of a county, home rule charter or statutory city, or town with the authority to adopt and administer an ordinance may choose to adopt and administer soil loss limits. Parts 8400.4000 to 8400.4080 are only applicable if the local government adopts a soil loss limits ordinance under Minnesota Statutes, sections 40.19 to 40.28.

8400.4002 DEFINITIONS.

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

Subp. 2. **Agricultural use.** "Agricultural use" means the use of land for the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, including sod, fruit,

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

vegetables, forage and cash grains, forestry, or bees and apiary products. Wetlands, pasture, and woodlands accompanying land in agricultural use are also defined as an agricultural use.

Subp. 3. **Board.** "Board" means the state Soil and Water Conservation Board created under Minnesota Statutes, chapter 40.

Subp. 4. **Conservation plan and time schedule.** "Conservation plan" means a document listing a set of practices that, when implemented, will decrease soil erosion to the soil loss limits on a particular parcel of land. The "time schedule" will set times to implement, make satisfactory progress on, and complete the conservation plan.

Subp. 5. **Conservation practice.** "Conservation practice" means a practice containing a definition, purpose, conditions under which the practice is applied including design requirements, and specifications containing a statement of details required for installing a conservation practice, including necessary kinds, quality, and quantity of work and materials. A conservation practice may be a permanent or temporary, vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion. Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, stripcropping, water and sediment control basins, and other permanent practices approved by the board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the board. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

Subp. 6. **Development activity.** "Development activity" means a physical disturbance of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining, and

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

filling lands. Federal, state, county, and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.

Subp. 7. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 8. **Erosion.** "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of man or nature.

Subp. 9. **Excessive soil loss.** "Excessive soil loss" means soil loss that is greater than the soil loss limit. "Excessive soil loss" may be evidenced by sedimentation on adjoining land or body of water, watercourse, or wetland.

Subp. 10. **Field office technical guide.** "Field office technical guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be measured, and conservation practice standards and specifications required in the application of soil and water conservation practices.

Subp. 11. **Land occupier.** "Land occupier" means a person, firm, corporation, municipality, or other legal entity that owns or possesses land as owner, lessee, renter, tenant, or otherwise. The terms include both the owner and the occupier of the land if they are not the same.

Subp. 12. **Local government.** "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include a soil and water conservation district, water management organization, joint power board, watershed district, or other governmental entity responsible for resource management within the affected jurisdiction.

Subp. 13. **Sediment.** "Sediment" means solid mineral or

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

organic material that is in suspension or motion, being transported or has been moved from its original site by air, water, gravity, or ice.

Subp. 14. **Sedimentation.** "Sedimentation" means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.

Subp. 15. **Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

Subp. 16. **Soil loss limits.** "Soil loss limits" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. The local soil loss limits ordinance must use the soil loss tolerance for each soil series described in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county, whichever is more current.

Subp. 17. **Soil loss tolerance.** "Soil loss tolerance" means the maximum rate of annual soil erosion that will permit crop productivity to be sustained economically and indefinitely. In Minnesota, "soil loss tolerance" ranges from one to five tons per acre per year depending on the particular soil characteristics. "Soil loss tolerance" values for Minnesota soil series are provided in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county.

8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, a local government may adopt soil loss limits which meet the minimum standards and criteria for soil loss, and once adopted shall administer and enforce the soil loss limits ordinance.

8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, districts shall:

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

A. provide assistance to local governments in determining whether excessive soil loss is occurring;

B. provide assistance to the land occupiers in developing a conservation plan and time schedule with suggested conservation practices and a time schedule for application of the best practicable conservation practices; and

C. make available to land occupiers state cost-share funds as provided by parts 8400.4045 and 8400.4060.

8400.4015 COMMISSIONER'S DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, the commissioner of agriculture shall:

A. establish statewide standards reviewed every five years, for the management of land to prevent excessive soil loss from occurring;

B. upon request, assist the local government in the drafting of a soil loss limits ordinance which meets the provisions of Minnesota Statutes, sections 40.19 to 40.28 and parts 8400.4000 to 8400.4080 which assistance includes, but is not limited to, creation of specific guidelines to be used locally in the formulation of reasonable regulations and other conservation practices based on sound technical data and consistent with statewide standards and community land use needs;

C. where sufficient information is not available, cooperate to the fullest extent with appropriate federal, state, and local governments in securing adequate technical information;

D. periodically review and upgrade soil loss limits criteria based on new technical methodologies;

E. disseminate to the local government, whenever available, technical information including information of federal, state, and local programs, educational materials and other material useful in carrying out a soil loss limits program; and

F. coordinate federal, state, and local soil loss limits activities in the state.

8400.4025 MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

ORDINANCES.

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

Subp. 2. **Sedimentation control plan.** Local government soil loss limits must require that a sedimentation control plan and time schedule must be developed by a land occupier and submitted to the local government before any development activity begins.

Subp. 3. **Model ordinances.** The model ordinances incorporated by reference in part 8400.4080 are the minimum standards for the adoption or amendment of soil loss limits under Minnesota Statutes, sections 40.19 to 40.28. A local government may adopt soil loss limits which are stricter than the model ordinances.

8400.4030 PROHIBITED ACTIVITIES.

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

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

A. if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

B. if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths; and

C. if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss.

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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 4. **Development activity.** A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government for its approval.

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

8400.4037 PROCEDURE FOR DEVELOPMENT ACTIVITY.

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

Subp. 2. **Specification of methods.** A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized during the construction process. These methods include, but are not limited to, the use of temporary seeding, fiber mats, plastic, straw mulch, sediment basins, or other measures adequate to prevent erosion and sediment damage.

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

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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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

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

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

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

8400.4040 PROCEDURE FOR AGRICULTURAL ACTIVITIES.

Subpart 1. **Complaint.** Adversely affected land occupiers, elected or duly appointed officials of the local government, or district board members may submit a signed written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land. The local government shall submit the complaint to the district for soil loss determination.

The signed written complaint must include:

A. the name and address of the alleged offending land

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

occupier;

B. the location of the tract of land with the alleged excessive soil loss;

C. other land or water that is allegedly being affected by the excessive soil loss; and

D. a description of the nature of the alleged excessive soil loss and resulting sedimentation.

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

The notice must:

A. be given ten days prior to the date of the inspection;

B. be delivered either by personal service or certified mail; and

C. if the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.

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

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

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

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

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

A. describe the land and state the extent to which soil loss exceeds the soil loss limits;

B. be delivered within ten days of the local government's decision;

C. be delivered either by personal service or by certified mail; and

D. state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

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

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

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

8400.4045 COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.

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

If the land occupier does not apply for cost-share funds within 90 days after the local government approves the mediated

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

written agreement, only 50 percent cost-share funds may be provided. The land occupier must apply for 50 percent cost-share funds within 270 days after the mediated written agreement is approved.

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

8400.4050 PENALTY.

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

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

8400.4055 HEARING PROCEDURE.

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

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

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

8400.4060 COST-SHARE FUNDS FOR A COURT ORDER.

Subpart 1. **Alternative plans.** If the court orders the

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

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

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

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

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

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

8400.4065 PENALTY.

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

8400.4070 ESTABLISHMENT OF COST-SHARE FUNDS.

Except for a development activity, a land occupier may apply for cost-share funds in the amounts set in parts 8400.4045 and 8400.4060. If cost-share funds are not currently available,

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the land occupier and the district shall enter into a priority cost-share assistance contract for future cost-share funds. The priority cost-share assistance contract must state the percentage of cost-share funds as set in parts 8400.4045 and 8400.4060. With the approval of the priority cost-share assistance contract, the land occupier is considered to be in compliance with the mediated or court ordered agreement.

The priority cost-share assistance contract, prepared by the commissioner of agriculture, is incorporated by reference. This document is subject to frequent change and is available at the state law library.

8400.4075 VARIANCES.

Subpart 1. **Request.** If a local government feels that a particular requirement of parts 8400.4000 to 8400.4070 prevents conservation practices or sedimentation control practices from being installed, a written request for a variance may be filed with the board. The request must contain:

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

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

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

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

Subp. 2. **Decision.** Variance requests must be submitted to the board at least 30 days prior to the board meeting at which the variance is to considered. Within 45 days after the meeting, the board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance may not be granted if it is in conflict with any

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

statute.

Subp. 3. **Modifications.** If a variance has been granted by the board, the local government holding the variance may file with the board, at any time, a written request for modification or amendment of the variance. The request for modification or amendment and the board's consideration of the request must comply with this part.

8400.4080 MODEL ORDINANCE.

The model ordinance, prepared by the commissioner of agriculture, in consultation with counties, districts, and other appropriate agencies, pursuant to Minnesota Statutes, section 40.21, subdivision 1, is incorporated by reference. That document may be subject to change and is available at the state law library.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD805

Agency: Department of Agriculture

Division:

Agency Contact: Carol Milligan

Minnesota Rules: Parts 8400.4000 to 8400.4080

Title: Proposed Rules Relating to
Excessive Soil Loss Control

Type of Rules: Permanent

Incorporations by Reference:

Rule Number	Material Incorporated
8400.4080	Model Ordinance

Steven C. Cross
Revisor of Statutes

Craig E. Lindeke
Senior Assistant Revisor
Phone: 296-0946
Date: March 7, 1986

Department of Agriculture
Soil and Water Conservation Board

In the Matter of the Proposed Rules Governing
Control of Excessive Soil Loss
(Minnesota Rules pts. 8400.4000 - 8400.4080).

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture and the Soil and Water Conservation Board have determined that the proposed rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in these rules are encouraged to submit comment in support of or in opposition to the proposed rules, and shall have 30 days to do so. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, 1985 Supplement, Section 40.21. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The proposed rules will not impact small business as defined in Minnesota Statutes, Section 14.115, because these rules relate to local administration of a state program.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rule are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Date: 3/24/86

Ronald Rangan

Director, Soil and Water Conservation Board

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In The Matter Of The Proposed
Rules Relating To The Control
Of Excessive Soil Loss

Statement Of Need
And Reasonableness

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (Department) of rules governing the control of excessive soil loss on Minnesota's lands. The rules are proposed for adoption pursuant to Minnesota Statutes, section 40.21, 1985 Supplement, which requires the Department to adopt rules for the implementation of a soil loss limits program.

The Notice of Intent to Solicit Outside Opinion was published in the State Register by the Department on June 24, 1985. The Department and the Soil and Water Conservation Board (SWCB) actively encouraged soil and water conservation districts, counties, various federal, state and local organizations and other interested parties to review and submit comments on the draft copies of the proposed rule and model ordinances. Thus, the proposed rule and model ordinances reflect the changes suggested by the Soil and Water Conservation Districts, counties, various federal, state and local organizations and other interested parties. The proposed rule includes the items required by the 1984 and 1985 legislation, provides clarification of certain sections of the legislation and establishes administrative requirements which provide local governments, with assistance from Soil and Water Conservation Districts, the ability to administer the program in a consistent manner and address local resource concerns.

For the aforementioned reasons, the Department has directed that the proceedings on the proposed amendments be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, sections 14.22 to 14.28.

The discussion provided in the statement is divided into the following parts:

Part II. Small Business Impact
Part III. General Overview
Part IV. Need For and Reasonableness of the Proposed Rule
Part V. Attachments - Model Ordinance I
- Model Ordinance II
- Priority Cost-Share Assistance Contract

II. SMALL BUSINESS IMPACT

Minnesota Statute, section 14.115 requires an assessment of the impact on small business when laws and rules are enacted that affect them.

The proposed rules pertaining to the control of excessive soil loss relate to the local administration of a state program. Consequently, exemption from a small business impact statement is claimed on the basis of section 14.115, subdivision 7, which excuses agency rules that do not directly affect small businesses.

III. GENERAL OVERVIEW

A. The Need For Rules

To understand the need for and reasonableness of the proposed rule, it is important to know why it is proposed. In recent years, considerable attention has been given to soil erosion and conservation practices which could be used to reduce excessive soil loss.

The 1982 adoption by Fillmore County of a soil erosion control ordinance is an example of this. To this end, the 1984 Minnesota Legislature directed the Department to implement a soil loss limits program for local governments. The program is voluntary and counties are given an opprotunity to adopt this type of ordinance under Minnesota Statutes, section 40.19. In 1985, the Minnesota Legislature amended the law so that the program is easily workable at the local level of government.

The authority to promulgate rules by the commissioner of agriculture is given in Minnesota Statutes, section 40.21, 1985 Supplement.

IV. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES

The following discussion addresses the need for and reasonableness of the proposed rules governing excessive soil loss at the local level of government. The discussion has been divided into sections according to the proposed section of the rule.

A. General Provisions (Section 8400.4000)

This section contains the general purpose, policy and scope statements of the proposed rules. These statements lay the groundwork for why the proposed rule is needed and the benefit the proposed rule will have to a local government if adopted.

B. Definitions (Section 8400.4002)

The proposed rule contains many new definitions related to excessive soil loss and land use. They are necessary to clarify the meaning of the proposed rule. The definitions are reasonable because they are consistent with generally accepted soil and water conservation terminology and will permit a better understanding of the proposed rule. Many of the definitions are contained in Minnesota Statutes, section 40.19, 1985 Supplement.

C. Local Duties (Section 8400.4005)

The proposed rule states that once a local government adopts an ordinance in accordance with Minnesota Statutes, section 40.19 to 40.28, 1985 Supplement, they shall administer and enforce that ordinance. This is consistent with the general procedures of local governments.

D. Soil And Water Conservation District Duties (Section 8400.4010)

This section is reasonable because it restates Minnesota Statutes, Chapter 40.23, subdivision 2, 1985 Supplement, Minnesota Statutes, Chapter 40.244, 1985 Supplement, and Minnesota Statutes, Chapter 40.26, 1985 Supplement.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

E. Commissioner's Duties (Section 8400.4015)

This section is reasonable because: 1) parts A and B restates Minnesota Statutes, Chapter 40.21, 1985 Supplement; 2) parts C, E and F are a part of the power and duties of the state Soil and Water Conservation Board, as stated in Minnesota Statutes, Chapter 40.03, subdivision 4, 1985 Supplement; and 3) part D restates Minnestoa Statutes, Chapter 40.21, subdivision 3, 1985 Supplement.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

F. Miminum Standards For Local Soil Loss Limits Ordinances (Section 8400.4025)

This section is reasonable because: 1) Subpart 1 restates Minnesota Statutes, Chapter 40.20, 1985 Supplement; 2) Subpart 2 restates Minnesota Statutes, Chapter 40.25, subdivision 1, 1985 Supplement; and 3) Subpart 3 restates Minnesota Statutes, Chapter 40.21, subdivision 2, 1985 Supplement.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

G. Prohibited Activities (Section 8400.4030)

This section is reasonable because: 1) Subpart 1 restates Minnesota Statutes, Chapter 40.22, 1985 Supplement; 2) Subpart 2a and b restate Minnesota Statutes, Chapter 40.22, and Minnesota Statutes, Chapter 40.22, 1985 Supplement; 3) The addition of Subpart 2c is for clarification since forestry and related activities are included in the definition of agricultural use (Section 8400.4002, Subpart 2); 4) Subpart 3 restates Minnesota Statutes, Chapter 40.22, subdivision 2, 1985 Supplement and Minnesota Statutes, Chapter 40.20, 1985 Supplement; 5) Subpart 4 restates Minnesota Statutes, Chapter 40.25, subdivision 1, 1985 Supplement; and 6) Subpart 5 states that federal, state, county and municipal roads that are designed and constructed according to the Department of Transportation's standard specifications for construction are exempt. Since Minnesota Statutes, Chapter 40.19, subdivision 6, 1985 Supplement exempts this type of road construction from the definition of a development activity.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

H. Procedure For Development Activity (Section 8400.4037)

This section is reasonable because: 1) Subpart 1 and 2 restate Minnesota Statutes, Chapter 40.25, subdivision 1, 1985 Supplement; 2) Subpart 3 is an appropriate reminder to local government of the importance of consistent application of ordinances; 3) Subpart 4 restates Minnesota Statutes, Chapter 40.25, subdivision 2, 1985 Supplement and the addition of the time schedule for review was recommended by several local governments and was set to keep the review process moving; 4) Subpart 5 in a continuation of the time schedule for review and notification of decision; 5) Subpart 6 restates Minnesota Statutes, Chapter 40.25, subdivision 2, 1985 Supplement; 6) Subpart 7 clarifies the position of a denial of a permit and if the permit is denied sedimentation control plan and time schedule, the land occupier must resubmit the plan or be in violation of Minnesota Statutes, Chapter 40.25, subdivision 3, 1985 Supplement; and 7) Subpart 8 restates Minnesota Statutes, Chapter 40.25, subdivision 3, 1985 Supplement.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

I. Procedure For Agricultural Activities (Section 8400.4040)

This section is reasonable because: 1) Subpart 1 restates Minnesota Statutes, Chapter 40.23, subdivision 1, 1985 Supplement; 2) Subpart 2 restates Minnesota Statutes, Chapter 40.23, subdivision 1 and 2 and also formalizes the notification of the land occupier of the inspection so that a record may be kept of the notification; 3) Subpart 3 restates Minnesota Statutes, Chapter 40.23, subdivision 2, 1985 Supplement, and 4) Subpart 4 and 5 restate Minnesota Statutes, Chapter 40.23, subdivision 3, 1985 Supplement and formalize the notification of the land occupier of the findings and that a record may be kept of the notification.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

J. Cost-Share Funds For A Mediated Settlement (Section 8400.4045)

This section is reasonable because it restates Minnesota Statutes, Chapter 40.23, subdivision 4, 1985 Supplement. In addition, since the cost-share funds are currently a part of the Soil and Water Conservation Board Cost-Share Program, the method of application and eligibility requirements must follow the adopted cost-share rule (Part 8400.0100 to 8400.2900).

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

K. Penalty (Section 8400.4050)

This section is reasonable because it restates Minnesota Statutes, Chapter 40.23, subdivision 5, 1985 Supplement.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

L. Hearing Procedure (Section 8400.4055)

This section is reasonable because it restates Minnesota Statutes, Chapter 40.242, subdivision 1, 1985 Supplement.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

M. Cost-Share Funds For A Court Order (Section 8400.4060)

This section is reasonable because it restates Minnesota Statutes, Chapter 40.242, subdivision 2, 1985 Supplement. In addition, since the cost-share funds are currently a part of the Soil and Water Conservation Board Cost-Share Program, the method of application and eligibility requirements must follow the adopted cost-share rule (Part 8400.0100 to 8400.2900).

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

N. Penalty (Section 8400.4065)

This section is reasonable because it restates Minnesota Statutes. Chapter 40.28, 1985 Supplement.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

O. Establishment Of Cost-Share Funds (Section 8400.4070)

This section is reasonable because it restates Minnesota Statutes, Chapter 40.244, 1985 Supplement and offers a procedure for soil and water conservation districts to use if cost-share funds are currently not available.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation.

P. Variances (Section 8400.4075)

This section is reasonable because it is consistent with current variance procedure used by the Soil and Water Conservation Board through the Cost-Share Program Rules, Section 8400.1950.

It is necessary because local government officials may feel that a particular requirement of the proposed rule is interfering with the application of a conservation practice; thus, this part offers a procedure of appeal to the Soil and Water Conservation Board.

Q. Model Ordinance (Section 8400.4080)

This section is reasonable because it is consistent with Minnesota Statutes, Chapter 40.21, subdivision 1, 1985 Supplement and incorporates the model ordinances by reference.

It is necessary because local government officials do not have ready access to Minnesota Statutes and are familiar with using agency rules for administrative interpretation and program implementation. In addition to being available at the State Law Library, the model ordinance will be provided by the Department to all interested parties.

V. ATTACHMENTS

- Model Ordinance I
- Model Ordinance II
- Priority Cost-Share Assistance Contract

MODEL SOIL EROSION ORDINANCE I (FREE STANDING)

The county board of commissioners of _____ County [the city council of the City of _____, the town board of the Township of _____] ordains:

Section 1.0. Authority. This ordinance is enacted pursuant to Minnesota Statutes, sections 40.19 to 40.28.

Section 2.0. Purpose of this ordinance is to encourage and guide the use of land in accordance with its capabilities, to treat it according to its needs, to prevent the degradation of lands, streams, and rivers, and to protect and promote the health, safety, and general welfare of the people of _____ County [the City of _____, the Township of _____].

Section 3.0. Scope. This ordinance, and soil loss limits specified in the ordinance, applies to all unincorporated [incorporated] land within _____ County [the City of _____, the Township of _____], including but not limited to agricultural land, woodland, pasture land, and land subject to development activity.

Section 4.0. Definitions. For purposes of this ordinance, the following terms have the meanings given them in this section:

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

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

4.3. Conservation practices. "Conservation practices" means practices and standards containing a definition, purpose, and conditions under which the practice applies, including design requirements, and specifications containing a statement of details required for installing a conservation practice, including kinds, quality, and quantity of work and materials needed to meet the standards.

A conservation practice may be a permanent or temporary, vegetative or structural measure that when applied to the land will contribute to the control of wind and water erosion.

Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, stripcropping, water and sediment control basins, and other permanent practices approved by the state Soil and Water Conservation Board.

Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the state Soil and Water Conservation Board.

The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

4.4. County [City, Town]. "County [City, Town]" means the elected governing body of _____ County [the City of _____, the Township of _____], or its designated officials or agents. Agents may include districts, water management organizations, joint powers boards, watershed districts, or other governmental entities responsible for resource management within _____ County [the City of _____, the Township of _____].

After adopting a soil loss ordinance, the county [city, town] may enter into an agreement with its agent allowing the agent to administer the functions and perform the duties of the county [city, town] set out in sections 7.0, 8.0, 9.0, 10.0, 11.0, and 14.0.

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

4.6. District. "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

4.7. Erosion. "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of man and nature.

4.8. Excessive soil loss. "Excessive soil loss" means soil loss that is greater than the soil loss limits set out in section 4.14. "Excessive soil loss" may be evidenced by sedimentation on adjoining land or body of water, watercourse or wetland.

4.9. Field office technical guide. "Field Office Technical Guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the district. The technical guide contains methods and procedures by which the various types of erosion can be measured and conservation practice standards and specifications required in the application of soil and water conservation practices.

4.10. Land occupier. "Land occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of any land as owner, lessee, renter, tenant, or otherwise. The term includes both the owner and the occupier of the land if they are not the same.

4.11. Sediment. "Sediment" means solid mineral or organic material, that, in suspension, is being transported, or has been moved from its original site by air, water, gravity, or ice, and has been deposited at another location.

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

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

4.14. Soil loss limit. "Soil loss limit" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, allowed on a particular soil. The soil loss limits for soils found in _____ County [the City of _____, the Township of _____] are the soil loss tolerances for each soil series as described in the Field Office Technical Guide. [Optional: The United States Department of Agriculture Soil Conservation Service has prepared a soil survey for _____ County that sets out the soil loss tolerances, according to the Field Office Technical Guide, for each soil series found in _____ County. The official _____ County Soil Survey is adopted by reference and declared to be a part of this ordinance. The official _____ County Soil Survey shall be on file in the offices of the county auditor and zoning administrator.] The soil loss limit for each soil series found in _____ County [the City of _____, the Township of _____] is set forth below:

Soil Series	Tolerance/Soil Loss Limit

Any other soil found in _____ County [the City of _____, the Township of _____] and not listed herein has a maximum soil loss tolerance of 5 tons per acre per year.

4.15. Soil loss tolerance. "Soil loss tolerance" means the maximum level of soil erosion that will permit a high level crop productivity to be sustained economically and indefinitely.

Section 5.0. Excessive soil loss prohibited. A person may not cause, conduct, contract for, or authorize an activity that causes excessive soil loss.

5.1. Agricultural activity. A land occupier shall:

(a) if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

(b) if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths; and

(c) if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss.

5.2 Development activity. A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government for its approval.

Section 6.0. Exemptions. An occupier of agricultural land is not violating section 5.0 if the district report, as developed through section 8.2, shows that existing farming practices and methods are being effectively applied to control soil loss. A land occupier engaged in federal, state, county, or municipal road construction is not violating Section 5.0 if the road construction is designed and installed according to Department of Transportation standard specifications for construction.

Section 7.0. Complaint. An adversely affected land occupier, and elected or appointed official of the county [city, town] or a district board member may submit a signed, written complaint to the county [city, town] if conditions exist that indicate there is excessive soil loss from a tract of land.

7.1. Elements of complaint. The signed, written complaint must contain:

(1) the name and address of the allegedly offending land occupier;

(2) the location of the tract of land with the alleged excessive soil loss;

(3) other land or water that is allegedly being affected by the excessive soil loss; and

(4) a description of the nature of the alleged excessive soil loss and resulting sedimentation.

7.2. Complaint to district. The county [city, town] shall submit the complaint to the district for soil loss determination.

Section 8.0. District determination of soil loss. The district shall determine the average annual soil loss in tons per acre per year for the tract of land cited in the complaint.

8.1. Entry for inspection. The district may enter public or private land to make an inspection to determine soil loss or to complete the report. The land occupier must be notified of the time of the inspections and be given an opportunity to be present when the inspection is made.

(a) The land occupier shall be notified of the time of inspection ten (10) days prior to the date of the inspection.

(b) The notice shall be delivered either by personal service or by certified mail.

(c) If the owner of the property and the occupier of the residence differ, both shall receive notification under the procedure stated above.

8.2. Report. The district shall submit a report to the county [city, town] that states the average soil loss in tons per acre per year for each tract of land and whether that soil loss is excessive under the applicable soil loss limits.

(a) If the soil loss is excessive the report must include identification of existing farming practices and a conservation plan and time schedule that will prevent excessive soil loss or reduce the soil loss on that tract of land.

(b) If the district report shows that soil loss from the tract of land is equal to or below the soil loss tolerance for that soil series, the county [city, town] may dismiss the complaint and notify the land occupier.

Section 9.0. Notice of excessive soil loss. The county [city, town] shall issue a notice of excessive soil loss to the land occupier. The notice shall:

(a) describe the land and state the extent to which soil loss exceeds the soil loss limits;

(b) be delivered by either personal service or by certified mail; and

(c) state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

9.2. Appointment of mediator. The county [city, town] may appoint the planning and zoning director, a planning commissioner, or other county [City, Town] official to act as mediator. The county [city, town] may also contract with a mediation center to provide mediation services.

9.3. Settlement. The land occupier and the county [city, town] must attempt to agree on a conservation plan and time schedule that will reduce soil loss to the local soil loss limits.

9.4. Filing of settlement. A mediated settlement must be set into writing and filed with the county recorder and any other local entity involved.

9.5. Cost-share funds. The land occupier has 90 days after the settlement is filed to apply for state cost-share funds that will provide 75 percent of the cost of the permanent conservation practices. Only 50 percent cost-share may be provided if the application is not made within 90 days after the settlement is filed. The land occupier must apply for 50 percent cost-share within 270 days after the mediated settlement is filed.

9.6. Penalty. A land occupier who does not comply with the provisions of the mediated written agreement is subject to a civil penalty up to $500.

Section 10.0. Forwarding complaint to county attorney. If the county [city, town] and land occupier do not reach a mediated settlement, or if the land occupier refuses to participate in mediation, the county [city, town] shall forward the complaint to the county attorney. The county attorney may petition the district court for a hearing under section 11.0.

Section 11.0. District court hearing. If the land occupier and the county [city, town] do not reach a mediated written agreement or if the land occupier has refused mediation, the county attorney may petition the district court for a hearing. The land occupier may present a conservation plan and time schedule as an alternative to the county's [city's, town's] conservation plan and time schedule. The court shall follow the procedure and the criteria set out at Minnesota Rules, part 8400.4055 in issuing an order for the implementation of a conservation plan and time schedule.

11.1. Cost-share funds. If the court orders the implementation of:

(a) the land occupier's conservation plan and time schedule, amends the conservation plan and time schedule, or develps a new conservation plan and

time schedule, the land occupier is eligible to apply for 75 percent cost-share funds for permanent conservation practices. The land occupier must apply for the cost-share within 90 days after the court order. If the land occupier does not apply within 90 days for the cost share funds, the cost-share must be reduced to 50 percent. The court shall establish a time when the land occupier is not eligible for cost-share funds if an application is not made; or

(b) the conservation plan and time schedule developed by the county [city, town] the land occupier shall be eligible for 50 percent cost-share funds if the land occupier applies within 90 days after the court order.

11.2. Penalty. If the land occupier does not comply with the provisions of the court order, the land occupier is subject to a civil penalty up to $500.

Section 12.0. District assistance. A land occupier who has filed a mediated written settlement under section 9.3 or who has received a court order under section 11.0 may request the district to assist in the planning, design, and application of practices necessary to reduce soil loss to the soil loss limits set out in section 4.15. The district must give the land occupier a high priority for technical and cost-share fund assistance.

Section 13.0. Cost-share application. The method of application and eligibility requirements for cost-share funds shall follow Minnesota Rules, parts 8400.0100 to 8400.2900. If any other state of federal cost-share funds are used, the method of application and eligibility requirements shall follow the current state or federal guidelines.

Section 14.0. Sedimentation control plan for development activities. The provisions of this section only apply to _____ County [the City of _____, the Township of _____] jurisdiction over unincorporated [incorporated] areas.

14.1. Sedimentation control plan. A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the county [city, town] for its approval.

(a) A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized, during the construction process, these methods include, but are not limited to, the use of temporary seeding, fiber mats, plastic, straw, mulch, sediment control basins, or other measures adequate to prevent erosion and sediment

damage.

(b) Any conservation practice developed for the sedimentation control plan may not be located in violation of any existing ordinance the county [city, town] is currently enforcing.

(c) The time schedule accompanying the sedimentation control plan must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan.

14.2. Review. The county [city, town] may appoint the zoning or planning director, auditor, building inspector, engineer or district to review the sedimentation control plan and time schedule.

The county [city, town] must forward the sedimentation control plan and time schedule to the appointed reviewer within seven (7) days of receiving the sedimentation control plan and time schedule from the land occupier.

The appointed reviewer must review the sedimentation control plan and time schedule within 21 days of receiving the plan from the county [city, town]. The county [city, town] shall notify the land occupier of its decision after receipt of the comments from the reviewer and no more than 28 days after receiving the sedimentation control plan and time schedule from the land occupier.

14.3. Permit required. If the reviewer determines that the sedimentation control plan and time schedule will control sedimentation, the county [city, town] shall issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan.

If the reviewer determines that the sedimentation control plan and time schedule do not control sedimentation, the county [city, town] shall not issue a permit for the development activity. The sedimentation control plan and time schedule shall be re-submitted for approval before the development acitivity begins.

14.4. Penalty. A person engaged in a development activity who does not secure a sedimentation control plan and time schedule or make satisfactory progress to complete the plan and schedule or make satisfactory progress to complete the plan and schedule is subject to a civil penalty. The county [city, town] shall file the complaint with the county attorney.

Section 15.0. Establishment of cost-share funds. Except for a development activity, a land occupier is entitled to apply for cost-share funds in the amounts set in sections 9.5 and 11.1.

If cost-share funds are not currently available, the land occupier and district shall enter into a priority cost-share assistance contract for future cost-share funds. The priority cost-share assistance contract shall state the percentage of cost-share funds as set in sections 9.5 and 11.1.

With the approval of the priority cost-share assistance contract, the land occupier shall be in compliance with the mediated or court ordered agreement.

Section 16.0. More restrictive standard controls. In the event of any conflict between the provisions of this ordinance and the provisions of an erosion control ordinance adopted by any township or home rule or statutory city, the more restrictive standard prevails.

Section 17.0. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance is not affected.

Section 18.0. Incorporation of rules and documents. Minnesota Rules, part 8400.4000 to 8400.4075 are incorporated by reference into this ordinance. The priority cost-share assistance contract is incorporated by reference into this ordinance.

Section 19.0 Provisions are cumulative. The provisions of this ordinance are cumulative to all other laws, ordinances, and regulations heretofore passed, or which may be passed hereafter, covering any subject matter in this ordinance.

Section 20.0 Effective date. This ordinance shall be effective the day after passage by the county board [city council, town board].

Draft 03-19-86

MODEL SOIL EROSION ORDINANCE II (AMENDMENT TO ZONING ORDINANCES)

ORDINANCE NUMBER_____

An Ordinance amending_____County [City, Town] Ordinance Number_____, commonly known as the _____County [City, Town] Zoning Ordinance.

The county board of commissioners of _____ County [the city council of the City of _____, the town board of the Township of _____] ordains:

Section 1.0. Authority. Sections_____ are enacted pursuant to Minnesota Statutes, sections 40.19 to 40.28.

Section 2.0. Purpose. The purpose of this ordinance is to encourage and guide the use of land in accordance with its capabilities, to treat it according to its needs, to prevent the degradation of lands, streams, and rivers, and to protect and promote the health, safety, and general welfare of the people of _____ County [the City of _____, the Township of _____].

Section 3.0. Scope. This ordinance, and soil loss limits specified in this ordinance, applies to all unincorporated [incorporated] land within _____ County [the City of _____, Township of _____], including but not limited to agricultural land, woodland, pasture land, and land subject to development activity.

Section 4.0. Definitions. For purposes of this ordinance, the following terms have the meanings given them in this section.

4.1. Administrator. "Administrator" means the _____ county [city of _____, township of _____] planning and zoning administrator.

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

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

4.4. Conservation practices. "Conservation practices" means practices and standards containing a definition, purpose, and conditions under which the

practice applies, including design requirements, and specifications containing a statement of details required for installing a conservation practice, including kinds, quality, and quantity of work and materials needed to meet the standards.

A conservation practice may be a permanent or temporary vegetative or structural measure that when applied to the land will contribute to the control of wind and water erosion.

Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, stripcropping, water and sediment control basins and other permanent practices approved by the board.

Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the state soil and water conservation board.

The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

4.5. County [City, Town]. "County [City, Town]" means the elected governing body of _____ County [the City of _____, Township of_____], or its designated officials or agents. Agents may include district, water management organizations, joint powers boards, watershed districts, or other governmental entities responsible for resource management within _____ County [the City of _____, Township of _____].

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

4.7. District. "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

4.8. Erosion. "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of man and nature.

4.9. Excessive soil loss. "Excessive soil loss" means soil loss that is

greater than the soil loss limits set out in section 4.15. "Excessive soil loss" may be evidenced by sedimentation on adjoining land or body of water, watercourse, or wetland.

4.10. Field office technical guide. "Field Office Technical Guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the district. The technical guide contains methods and procedures by which the various types of erosion can be measured and conservation practice standards and specifications required in the application of soil and water conservation practices.

4.11. Land occupier. "Land occupier" means a person, firm, corporation, municipality, or other legal entity that holds title to or is in possession of any lands as owner, lessee, renter, tenant, or otherwise. The term includes both the owner and the occupier of the land if they are not the same.

4.12. Sediment. "Sediment" means solid mineral or organic material, that, in suspension or motion, is being transported, or has been moved from its original site by air, water, gravity, or ice, and has been deposited at another location.

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

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

4.15. Soil loss limit. "Soil loss limit" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, allowed on a particular soil. The soil loss limits for soils found in _____ County [the City of _____, the Township of _____] are the soil loss tolerances for each soil series described in the Field Office Technical Guide. [Optional: The United States Department of Agriculture Soil Conservation Service has prepared a soil survey for _____County that sets out the soil loss tolerances, according to the Field Office Technical Guide, for each soil series found in _____ County. The official _____ County Soil Survey shall be on file in the offices of the county [City, Township] planning and zoning administrator.] The soil loss limit for each soil series found in _____County [the City of _____, Township of _____] is set forth below:

Soil Series Tolerance/Soil Loss Limit

Any other soil found in _____ County [the City of _____, Township of _____] herein has a maximum tolerance of 5 tons per acre per year soil loss.

4.16. Soil Loss Tolerance. "Soil Loss Tolerance" means the maximum level of soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely.

Section 5.0. Appointment of zoning administrator. Pursuant to Minnesota Statutes, section 40.19, subdivision 8 and section 4.5 of this ordinance, the _____County [City of _____, Township of _____] planning and zoning administrator is appointed to carry out the provisions of this ordinance.

Section 6.0. Excessive soil loss prohibited. A person may not cause, conduct, contract for, or authorize an activity that causes excessive soil loss.

6.1. Agricultural activity. A land occupier shall:

(a) if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

(b) if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths; and

(c) if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss.

6.2. Development activity. A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government for its approval.

Section 7.0. Exemptions. A land occupier of agricultural land is not violating section 6.0 if the district report as developed through section 9.2, shows that existing farming practices and methods are being effectively applied to control soil loss. A land occupier engaged in federal, state,

county, or municipal road construction is not violating Section 6.0 if the road construction is designed and installed according to Department of Transportation standard specifications for construction.

Section 8.0. Complaint. An adversely affected land occupier, and elected or appointed official of the county [city, town] or a district board member may submit a signed, written complaint to the administrator if conditions exist that indicate there is excessive soil loss from a tract of land.

8.1. Elements of complaint. The signed, written complaint must contain:

(1) the name and address of the allegedly offending land occupier;

(2) the location of the tract of land with the alleged excessive soil loss;

(3) other land or water that is allegedly being affected by the excessive soil loss; and

(4) a description of the nature of the alleged excessive soil loss and resulting sedimentation.

8.2. Complaint to district. The administrator shall submit the complaint to the district for soil loss determination.

Section 9.0. District determination of soil loss. The district shall determine the average soil loss in tons per acre per year for the tract of land cited in the complaint.

9.1. Entry for inspection. The district may enter public or private land to make an inspection to determine soil loss or to complete the report. The land occupier must be notified of the time of the inspections and be given an opportunity to be present when the inspection is made.

(a) The land occupier shall be notified of the time of inspection, ten (10) days prior to the date of the inspection.

(b) The notice shall be delivered either by personal service or by certified mail.

(c) If the owner of the property and the occupier of the residence differ, both shall receive notification under the procedure stated above.

9.2 Report. The district shall submit a report to the administrator that states the average soil loss in tons per acre per year for each tract of land and whether that soil loss is excessive under the applicable soil loss limits.

(a) If the soil loss is excessive, the report must include an identification of existing farming practices and a conservation plan and time schedule that will prevent excessive or reduce soil loss on that tract of land.

(b) If the district report shows that soil loss from the tract of land is equal to or below the soil loss tolerance for that soil series, the administrator may dismiss the complaint and notify the land occupier.

Section 10.0. Mediation. If the district report shows that soil loss from the tract of land is excessive and alternative conservation practices are available to reduce the soil loss, the administrator shall request the offending land occupier to participate in mediation with the administrator.

10.1. Notice of excessive soil loss. The administrator shall issue a notice of excessive soil loss to the land occupier. The notice shall:

(a) describe the land and state the extent to which soil loss exceeds the soil loss limits;

(b) be delivered either by personal service or by certified mail; and

(c) state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

10.2. Appointment of mediator. The administrator may appoint a planning commissioner or other county [city, town] official to act as mediator. The county board [city council, town board] may also contract with a mediation center to provide mediation services.

10.3. Settlement. The land occupier and the administrator shall attempt to agree on a conservation practice and time schedule that will reduce soil loss to the local soil loss limits.

10.4. Filing of settlement. A mediated settlement must be set into writing and filed with the county recorder and administrator.

10.5. Cost-share funds. The land occupier has 90 days after the settlement is filed to apply for state cost-share funds that will provide 75 percent of the cost of the permanent conservation practices. Only 50 percent cost-share may be provided if the application is not made within 90 days after the settlement is filed. The land occupier must apply for 50 percent cost-share within 270 days after the mediated settlement is filed.

10.6. Penalty. A land occupier who does not comply with the provisions of the mediated written agreement is subject to a civil penalty up to $500.

Section 11.0. Forwarding complaint to county attorney. If the administrator and the land occupier do not reach a mediated settlement, or if the land occupier refuses to participate in mediation, the administrator shall forward the complaint to the county attorney. The county attorney may dismiss

the complaint or petition for a hearing under section 12.0.

Section 12.0. District court hearing. If the land occupier and the administrator do not reach a mediated written agreement or if the land occupier has refused mediation, the county attorney may petition the districtcourt for a hearing. The land occupier may present the conservation plan and time schedule as an alternative to the administrator's plan and time schedule. The court shall follow the procedure and the criteria set out in Minnesota Rules, part 8400.4055 in issuing an order for the implementation of a conservation plan and time schedule.

12.1. Cost-share funds. If the court orders the implementation of:

(a) the land occupier's conservation plan and time schedule, amends the conservation plan and time schedule, or if the court develops a new conservation plan and time schedule, the land occupier is eligible to apply for 75 percent cost-share funds for permanent conservation practices. The land occupier must apply for the cost-share within 90 days after the court order. If the land occupier does not apply within 90 days for the cost-share funds, the cost-share must be reduced to 50 percent. The court shall establish a time when the land occupier is not eligible for cost-share funds if an application is not made; or

(b) the conservation plan and time schedule developed by the district in its report, the land occupier shall be eligible for 50 percent cost-share if the land occupier applies within 90 days after the court order.

12.2. Penalty. If the land occupier does not comply with the provisions of the court order, the land occupier is subject to a civil penalty up to $500.

Section 13.0. District assistance. A land occupier who has filed a mediated written settlement under section 10.3 or who has received a court order under section 12.0 may request the district to assist in the planning, design, and application of practices necessary to reduce soil loss to the soil loss limits set out in section 4.16. The district must give the land occupier a high priority for technical and cost-share assistance.

Section 14.0. Cost-share application. The method of application and eligibility requirements for cost-share funds shall follow Minnesota Rules, parts 8400.0100 to 8400.2900. If any other state or federal cost-share funds are used, the method of application and eligibility requirements shall follow the current state of federal guidelines.

Section 15.0. Sedimentation control plan for development activities. The

provisions of this section only apply to _____ County [the City of _____, Township of _____] jurisdiction over unincorporated [incorporated] areas.

15.1. Sedimentation control plan. A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the administrator for its approval.

(a) A sedimentation control plan and time schedule must specify how the movement of soil and damage to other land and regions will be minimized during the construction process. These methods include, but are not limited to, the use of temporary seeding, fiber mats, plastic, straw, mulch, sediment control basins, or other measures adequate to prevent erosion and sediment damage.

(b) Any conservation practice developed for the sedimentation control plans may not be located in violation of any existing ordinance the county [city, town] is currently enforcing.

(c) The time schedule accompanying the sedimentation control plan must establish deadlines for the implementation and completion of each phase or element of the sedimentation control plan.

15.2. Review. The administrator must review the sedimentation within 21 days of receiving the plan from the land occupier. The county [city, town] shall notify the land occupier of its decision after receipt of comments from the administrator and no more that 28 days after receiving the sedimentation control plan and time schedule from the land occupier.

15.3. Permit required. If the administrator determines that the sedimentation control plan and time schedule will control sedimentation, the administrator shall issue a permit that authorizes the development activity contingent upon the implementation and completion of the sedimentation control plan.

If the administrator determines that time sedimentation control plan and time schedule do not control sedimentation, the county [city, town] shall not issue a permit for the development activity. The sedimentation control plan and time schedule shall be re-submitted for approval before the development activity begins.

15.4. Penalty. A person engaged in a development activity who does not secure a sedimentation control plan permit or does not commence or complete the sedimentation control plan and time schedule or make satisfactory progress

to complete the plan and schedule is subject to a civil penalty. The administrator shall file the complaint with the county attorney.

Section 16.0. Establishment of cost-share funds. Except for a development activity, a land occupier is entitled to apply for cost-share funds in the amounts set in sections 10.5 and 12.1.

If cost-share funds are not currently available, the land occupier and district shall enter into a priority cost-share assistance contract for future cost-share funds. The priority cost-share assistance contract shall state the percentage of cost-share funds as set in sections 10.5 and 12.1.

With the approval of the priority cost-share assistance contract, the land occupier shall be in compliance with the mediated or court ordered agreement.

Section 17.0. More restrictive standard controls. In the event of any conflict between the provisions of this ordinance and the provisions of an erosion control ordinance adopted by any township or home rule or statutory city, the more restrictive standard prevails.

Section 18.0. Severability. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance is not affected.

Section 19.0. Incorporation of rules and documents. Minnesota Rules, parts 8400.4000 to 8400.4075 are incorporated by reference into this ordinance.

The priority cost-share assistance contract is incorporated by reference into this ordinance.

Section 20.0 Provisions are cumulative. The provisions of this ordinance are cumulative to all other laws, ordinances, and regulations heretofore passed, or which may be passed hereafter, covering any subject matter in this ordinance.

Section 21.0. Effective date. This ordinance shall be effective the day after passage by the county board [city council, town board].

NA-03089-01
(SWCB-4) 1/78

MINNESOTA SOIL AND WATER CONSERVATION BOARD
PRIORITY COST-SHARE ASSISTANCE CONTRACT

Priority Contract Number _____

Individual or Group Contract

I (we) the undersigned, do hereby request cost-share assistance to help defray the cost of installing the soil conservation practices as listed below. **It is understood and agreed that in addition to the conditions set forth in the respective Cost Share Assistance Contracts, the following shall apply:**

1. **The practices identified herein to be installed during the priority period will be consistent with the Resource Conservation Plan as developed and mutually agreed upon by the land occupier and the district supervisors.** All practices shall be installed according to such plan and program rules and requirements in effect at the time the practice is installed.

2. If approved for funding, the land occupier intends to install an eligible practice during each below scheduled year.

3. The practice(s), the amount thereof, the cost-share funds approved and all other pertinent information for each year shall be recorded annually on a Cost-Share Assistance Contract.

4. **Subject to the availability of funds,** the district supervisors will give **priority** consideration each year to requests for cost-share assistance for soil and water conservation practices scheduled for installation during that year. Such assistance may be provided under amendments to this contract as agreed to by the parties involved.

The soil and water conservation practices and the amount requested for each year of the priority contract period, and as shown on the CPO (Conservation Plan of Operations), are listed below.

Field no.	Practice	Amount planned	Year to perform

_____ Signed _____
(Date) (Land occupier) (Address)

_____ Signed _____
(Date) (Owner) (Address)

Approved by:

_____ Soil and Water Conservation District

By: _____ Date: _____
(Chairman, Soil and Water Conservation District)

In the Matter of the Proposed
Rules of the Soil and Water Conservation Board
Governing Control of Excessive Soil Loss
(Minnesota Rules pts. 8400.4000 - 8400.4080)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being first duly sworn, deposes and says:

That on the 9th day of April, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Marie L. Skerbitz

Subscribed and sworn to before me
this 9th day of April, 1986.

Diane M. Windham

DEPARTMENT OF PUBLIC WELFARE (Now HUMAN SERVICES)

9500.2000-.2880 (proposed) 2107
9500.0010; .0020; .0030; .0040; .0050; .0060; .0070; .0080; .0090; .0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180; .0190; .0200; .0210; .0220; .0230; .0240; .0250; .0260; .0270; .0280; .0290; .0300; .0310; .0320; .0330; .0340; .0350; .0360; .0361; .0370 (proposed repealer) 2107
9549.0050-.0059 (proposed temporary) 2016
9550.6200-.6240 (adopted) 2005

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture Soil and Water Conservation Board

Proposed Rules Relating to Excessive Soil Loss Control

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture and the Soil and Water Conservation Board have determined that the proposed rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28.

Persons interested in these rules are encouraged to submit comment in support of or in opposition to the proposed rules, and shall have 30 days to do so. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20.

Persons who wish to submit comments or a written request for a public hearing should submit them to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, 1985 Supplement, Section 40.21. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attrorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The proposed rules will not impact small business as defined in Minnesota Statutes, Section 14.115, because these rules relate to local administration of a state program.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rule are available and may be obtained by contacting Mr. Heil.

March 24, 1986

Ronald N. Nargang, director
Soil and Water Conservation Board

Rules as proposed (all new material)

8400.4000 GENERAL PROVISIONS.

Subpart 1. **Purpose.** The purpose of parts 8400.4000 to 8400.4080 is to reduce the amount of soil erosion on Minnesota land. The benefits of the local adoption of parts 8400.4000 to 8400.4080 include decreasing the amount of off-site damages from sediment, retaining the productivity of the soil, and improving water quality.

Subp. 2. **Policy.** Parts 8400.4000 to 8400.4080 are adopted in accordance with Minnesota Statutes, sections 40.19 to 40.28 and apply to all activities which cause excessive soil loss.

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

Subp. 4. **Voluntary adoption.** A local government of a county, home rule charter or statutory city, or town with the authority to adopt and administer an ordinance may choose to adopt and administer soil loss limits. Parts 8400.4000 to 8400.4080 are only applicable if the local government adopts a soil loss limits ordinance under Minnesota Statutes, sections 40.19 to 40.28.

8400.4002 DEFINITIONS.

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

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

Subp. 3. **Board.** "Board" means the state Soil and Water Conservation Board created under Minnesota Statutes, chapter 40.

Subp. 4. **Conservation plan and time schedule.** "Conservation plan" means a document listing a set of practices that, when implemented, will decrease soil erosion to the soil loss limits on a particular parcel of land. The "time schedule" will set times to implement, make satisfactory progress on, and complete the conservation plan.

Subp. 5. **Conservation practice.** "Conservation practice" means a practice containing a definition, purpose, conditions under which the practice is applied including design requirements, and specifications containing a statement of details required for installing a conservation practice, including necessary kinds, quality, and quantity of work and materials. A conservation practice may be a permanent or temporary, vegetative or structural measure that, when applied to the land, will contribute to the control of wind and water erosion. Permanent practices are those that have an effective life of ten years or more and include grassed waterways, terraces, field windbreaks, water control structures, grade stabilization structures, sediment retention structures, stripcropping, water and sediment control basins, and other permanent practices approved by the board. Temporary practices include conservation tillage, contour farming, grasses and legumes in rotation, emergency tillage, and any other cultural practices approved by the board. The field office technical guide or other recognized technical procedures must be used to design, install, and certify practices.

Subp. 6. **Development activity.** "Development activity" means a physical disturbance of the land associated with activities that may result in sedimentation of adjacent lands or waters. These activities include, but are not limited to, clearing, grading, excavating, transporting, draining, and filling lands. Federal, state, county, and municipal road construction designed and installed according to Department of Transportation standard specifications for construction are not development activities.

Subp. 7. **District.** "District" means a soil and water conservation district organized under Minnesota Statutes, chapter 40.

Subp. 8. **Erosion.** "Erosion" means any process that wears away the surface of the land by the action of water, wind, ice, or gravity. "Erosion" can be accelerated by the activities of man or nature.

Subp. 9. **Excessive soil loss.** "Excessive soil loss" means soil loss that is greater than the soil loss limit. "Excessive soil loss" may be evidenced by sedimentation on adjoining land or body of water, watercourse, or wetland.

Subp. 10. **Field office technical guide.** "Field office technical guide" means the guide developed by the United States Department of Agriculture, Soil Conservation Service and adopted by the soil and water conservation districts containing technical information including methods and procedures by which the various types of erosion can be measured, and conservation practice standards and specifications required in the application of soil and water conservation practices.

Subp. 11. **Land occupier.** "Land occupier" means a person, firm, corporation, municipality, or other legal entity that owns or possesses land as owner, lessee, renter, tenant, or otherwise. The terms include both the owner and the occupier of the land if they are not the same.

Subp. 12. **Local government.** "Local government" means the elected governing body of a county, home rule charter or statutory city, or town, or their designated agents. Agents may include a soil and water conservation district, water management organization, joint power board, watershed district, or other governmental entity responsible for resource management within the affected jurisdiction.

Subp. 13. **Sediment.** "Sediment" means solid mineral or organic material that is in suspension or motion, being transported or has been moved from its original site by air, water, gravity, or ice.

Subp. 14. **Sedimentation.** "Sedimentation" means the process or action of depositing sediment that, upon inspection, is determined to have been caused by erosion.

Subp. 15. **Soil.** "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

Subp. 16. **Soil loss limits.** "Soil loss limits" means the maximum amount of soil loss from water or wind erosion, expressed in tons per acre per year, that is allowed by local regulations on a particular soil. The local soil loss limits ordinance must use the soil loss tolerance for each soil series described in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county, whichever is more current.

Subp. 17. **Soil loss tolerance.** "Soil loss tolerance" means the maximum rate of annual soil erosion that will permit crop productivity to be sustained economically and indefinitely. In Minnesota, "soil loss tolerance" ranges from one to five tons per acre per year depending on the particular soil characteristics. "Soil loss tolerance" values for Minnesota soil series are provided in the Field Office Technical Guide or the United States Department of Agriculture Soil Conservation Service Soil Survey for a particular county.

8400.4005 LOCAL DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, a local government may adopt soil loss limits which meet the minimum standards and criteria for soil loss, and once adopted shall administer and enforce the soil loss limits ordinance.

8400.4010 SOIL AND WATER CONSERVATION DISTRICT DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, districts shall:

A. provide assistance to local governments in determining whether excessive soil loss is occurring;

B. provide assistance to the land occupiers in developing a conservation plan and time schedule with suggested conservation practices and a time schedule for application of the best practicable conservation practices; and

C. make available to land occupiers state cost-share funds as provided by parts 8400.4045 and 8400.4060.

8400.4015 COMMISSIONER'S DUTIES.

In accordance with Minnesota Statutes, sections 40.19 to 40.28, the commissioner of agriculture shall:

A. establish statewide standards reviewed every five years, for the management of land to prevent excessive soil loss from occurring;

B. upon request, assist the local government in the drafting of a soil loss limits ordinance which meets the provisions of

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Minnesota Statutes, sections 40.19 to 40.28 and parts 8400.4000 to 8400.4080 which assistance includes, but is not limited to, creation of specific guidelines to be used locally in the formulation of reasonable regulations and other conservation practices based on sound technical data and consistent with statewide standards and community land use needs;

C. where sufficient information is not available, cooperate to the fullest extent with appropriate federal, state, and local governments in securing adequate technical information;

D. periodically review and upgrade soil loss limits criteria based on new technical methodologies;

E. disseminate to the local government, whenever available, technical information including information of federal, state, and local programs, educational materials and other material useful in carrying out a soil loss limits program; and

F. coordinate federal, state, and local soil loss limits activities in the state.

8400.4025 MINIMUM STANDARDS FOR LOCAL SOIL LOSS LIMITS ORDINANCES.

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

Subp. 2. **Sedimentation control plan.** Local government soil loss limits must require that a sedimentation control plan and time schedule must be developed by a land occupier and submitted to the local government before any development activity begins.

Subp. 3. **Model ordinances.** The model ordinances incorporated by reference in part 8400.4080 are the minimum standards for the adoption or amendment of soil loss limits under Minnesota Statutes, sections 40.19 to 40.28. A local government may adopt soil loss limits which are stricter than the model ordinances.

8400.4030 PROHIBITED ACTIVITIES.

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

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

A. if engaged in an agricultural use, prevent excessive soil loss and ensure that proper management and conservation practices are being applied to the land;

B. if using wooded or open land for pasture, ensure that proper management is used to prevent excessive soil loss due to overgrazing or cattle paths; and

C. if using wooded land for timber harvest, ensure that proper management is used to prevent excessive soil loss.

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

Subp. 4. **Development activity.** A person engaged in a development activity that will disturb over one acre of land must submit a sedimentation control plan and time schedule that will prevent excessive soil loss to the local government for its approval.

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

8400.4037 PROCEDURE FOR DEVELOPMENT ACTIVITY.

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

Subp. 2. **Specification of methods.** A sedimentation control plan and time schedule must specify how the movement of soil and damage to other lands and regions will be minimized during the construction process. These methods include, but are not limited to, the use of temporary seeding, fiber mats, plastic, straw mulch, sediment basins, or other measures adequate to prevent erosion and sediment damage.

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

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

Subp. 5. **Time for review.** The appointed reviewer shall review the sedimentation control plan and time schedule within 21 days

of receiving the plan from the local government. The local government shall notify the land occupier of its decision after receipt of comments from the reviewer and no more than 28 days after receiving the sedimentation control plan and time schedule from the land occupier.

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

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

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

8400.4040 PROCEDURE FOR AGRICULTURAL ACTIVITIES.

Subpart 1. **Complaint.** Adversely affected land occupiers, elected or duly appointed officials of the local government, or district board members may submit a signed written complaint to the local government if conditions exist that indicate there is excessive soil loss from a tract of land. The local government shall submit the complaint to the district for soil loss determination.

The signed written complaint must include:

A. the name and address of the alleged offending land occupier;

B. the location of the tract of land with the alleged excessive soil loss;

C. other land or water that is allegedly being affected by the excessive soil loss; and

D. a description of the nature of the alleged excessive soil loss and resulting sedimentation.

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

The notice must:

A. be given ten days prior to the date of the inspection;

B. be delivered either by personal service or certified mail; and

C. if the owner of the property and the occupier of the residence differ, be delivered to both the owner and the occupier.

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

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

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

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

A. describe the land and state the extent to which soil loss exceeds the soil loss limits;

B. be delivered within ten days of the local government's decision;

C. be delivered either by personal service or by certified mail; and

D. state a time, not more than 90 days after the date of delivery of the order, by which mediation must be commenced.

Subp. 5. **Mediation.** If the district report shows that soil loss from a tract of land is excessive and conservation practices are

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

available to reduce the soil loss, the local government may request the offending land occupier to participate in mediation with the local government. The local government may appoint the planning and zoning director, a planning commissioner, or other official to act as mediator. The local government also may contract with a private mediation center to provide mediation services.

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

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

8400.4045 COST-SHARE FUNDS FOR A MEDIATED SETTLEMENT.

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

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

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

8400.4050 PENALTY.

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

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

8400.4055 HEARING PROCEDURE.

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

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

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

8400.4060 COST-SHARE FUNDS FOR A COURT ORDER.

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

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

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

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

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

8400.4065 PENALTY.

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

8400.4070 ESTABLISHMENT OF COST-SHARE FUNDS.

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

The priority cost-share assistance contract, prepared by the commissioner of agriculture, is incorporated by reference. This document is subject to frequent change and is available at the state law library.

8400.4075 VARIANCES.

Subpart 1. **Request.** If a local government feels that a particular requirement of parts 8400.4000 to 8400.4070 prevents conservation practices or sedimentation control practices from being installed, a written request for a variance may be filed with the board. The request must contain:

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

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

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

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

Subp. 2. **Decision.** Variance requests must be submitted to the board at least 30 days prior to the board meeting at which the variance is to considered. Within 45 days after the meeting, the board must approve or deny the variance request and provide written notification of the decision to the applicant. A variance may not be granted if it is in conflict with any statute.

Subp. 3. **Modifications.** If a variance has been granted by the board, the local government holding the variance may file with the board, at any time, a written request for modification or amendment of the variance. The request for modification or amendment and the board's consideration of the request must comply with this part.

8400.4080 MODEL ORDINANCE.

The model ordinance, prepared by the commissioner of agriculture, in consultation with counties, districts, and other appropriate agencies, pursuant to Minnesota Statutes, section 40.21, subdivision 1, is incorporated by reference. That document may be subject to change and is available at the state law library.

Department of Human Services

Proposed Rules Relating to Administration of Aid to Families with Dependent Children

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room 5, State Office Building, 432 Park Street, St. Paul, Minnesota, 55155 on May 14 and 15, 1986 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to George Beck, Adminsitrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone 612/341-7601, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge, may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days.

The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

CERTIFICATE OF BOARD'S
RESOLUTION ADOPTING RULES

I, Wally Bernhardson, do hereby certify that I am a member and the chairman of the Board of Soil and water Conservation, 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 Board of Soil and Water Conservation, duly and properly called and held on the 10th day of June, 1986, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and 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 control of Excessive Soil Loss be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes, Sec. 40.21, subd. 1 (1985 supplement) and that Ron Nargang, the Director of the Board of Soil and Water Conservation, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of the law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10th day of June, 1986.

Wally Bernhardson
Chairman of the Board

Attest by one other Board member

STATE OF MINNESOTA
SOIL AND WATER CONSERVATION BOARD
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules
Relating to the Control of
Excessive Soil Loss

Findings of Fact and
Conclusion

The above entitled rules and Notice of Intent to Adopt Rules were published in the State Register on the 14th day of April, 1986, and proper notice required by Minnesota Statutes, 1986, 14.05 to 14.36 was served upon all persons, associations and other interested groups registered with the Minnesota Department of Agriculture and the Soil and Water Conservation Board (Board) for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced upon the records, files and prodeedings herein, I find and conclude the following:

FINDINGS

Twenty written responses were submitted regarding the Rules as Proposed. One written response was a petition, signed by seven individuals, requesting a public hearing on the Rules as Proposed. This did not constitute the required 25 or more persons submitting written requests for a public hearing. Two written responses were letters of support and did not request any changes to the Rules as Proposed. One written response contained no adverse comment since the program is voluntary. The remaining sixteen written responses were submitted and reviewed in relation to the Rules as Proposed.

After reviewing these comments the Board agrees with suggestions made by the Carver Soil and Water Conservation District, Pioneer Creek Conservation Commission, Grant County Highway Department, and Minnesota Pollution Control Agency. The changes recommended by these groups have been incorporated in the Rules as Adopted.

Of the remaining written responses, suggestions submitted by the Rock Soil and Water Conservation District, Scott Soil and Water Conservation District, Dakota Soil and Water Conservation District, Hennepin Soil and Water Conservation District, Rice County Planning and Zoning Department, Nicollet County Engineer's Office, Wright County Attorney's Office, Rice Creek Watershed District, Construction Industries Cooperative Committee, Minnesota Department of Natural Resources, and Soil Conservation Service were reviewed and many suggestions or changes were acceptable to the Board and incorporated into the Rules as Adopted. A summary and conclusion of the remaining suggestions and changes follows:

Rock Soil and Water Conservation District submitted a suggestion to remove contour farming from the list of temporary conservation practices and insert it under permanent conservation practices in the definition of conservation practice.

The Board does not agree with this suggestion from Rock Soil and Water Conservation District for the following reasons:

(a) As stated in part IV.B. of the Statement of Need and Reasonableness, part 8400.4002, subpart 5, is required by law, and

(b) the definition of conservation practice is consistent with the Cost-Share Program rules, part 8400.0100 to 8400.2800.

Scott Soil and Water Conservation District submitted a suggestion to remove stripcropping from the list of permanent conservation practices and insert it under temporary conservation practices in the definition of conservation practice.

The Board does not agree with this suggestion from Scott Soil and Water Conservation District for the following reasons:

(a) As stated in part IV.B. of the Statement of Need and Reasonableness, part 8400.4002, Subpart 5, is required by law, and

(b) the definition of conservation practice is consistent with the Cost-Share Program rules, part 8400.0100 to 8400.2800.

Scott Soil and Water Conservation District also suggested that a conservation practice is not a definition, purpose, condition (design requirements, specifications) but a permanent or temporary, vegetative or structural measure.

Although, this is a change in wording not in meaning, the Board does not agree with this suggestion from Scott Soil and Water Conservation District for the following reason:

(a) As stated in part IV.B. of the Statement of Need and Reasonableness, part 8400.4002, subpart 5, is required by law.

Scott Soil and Water Conservation District also suggested that the definition of sediment be changed.

The Board does not agree with this suggestion from Scott Soil and Water Conservation District for the following reason:

(a) As stated in part IV.B. of the Statement of Need and Reasonableness, part 8400.4002, subpart 13, is required by law.

The remainder of Scott Soil and Water Conservation District suggestions were incorporated into the Rules as Adopted.

Dakota Soil and Water Conservation District submitted many suggestions to increase the Soil and Water Conservation District authority including review and approval of all permit applications, co-responsibility for enforcement of ordinance, and implementation of a fee schedule for the costs incurred.

The Board does not agree with these suggestions from the Dakota Soil and Water Conservation District for the following reasons:

(a) As stated in part IV.H. of the Statement of Need and Reasonableness, many of the procedures are required by law,

(b) as stated in Minnesota Statutes, 1986, Chapter 40.25, subdivision 2, local government may appoint the zoning and planning director, building inspector, county engineer or soil and water conservation district to review the plan and time schedule and the local government must issue a permit that authorizes the development activity, and

(c) the suggestions substantially change the Rule as Proposed.

The remainder of Dakota Soil and Water Conservation District suggestions were incorporated into the Rules as Adopted. These suggestions include: A definition of sedimentation control plan and criteria, expanded definition of conservation practice and sediment, districts role in the development of technical data and commissioner's duties.

Hennepin Soil and Water Conservation District submitted two sets of suggestions from their supervisor's and staff. These suggestions include: approval, monitoring and enforcement of plans, regulatory aspects and changing in the penalty.

The Board does not agree with these suggestions from the Hennepin Soil and Water Conservation District for the following reasons:

(a) As stated in part IV.H., K. and N. of the Statement of Need and Reasonableness, many of the procedures are required by law,

(b) as stated in Minnesota Statutes, 1986, Chapter 40.25, subdivision 2, local government may appoint the zoning and planning director, building inspector, county engineer or soil and water conservation district to review the plan and time schedule and the local government must issue a permit that authorizes the development activity, and

(c) the suggestions substantially change the Rule as Proposed.

The Board does accept the remainder of Hennepin Soil and Water Conservation District suggestions including: A separate urban erosion-sedimentation control ordinance (completed through part 8400.4080), a definition of sedimentation control plan and criteria for the plan, expanded definition of soil loss limit and conservation practice and the inclusion of other recognized technical procedures for urban erosion control practices.

Rice County Planning and Zoning Department submitted a suggestion to change the amount of time from 90 days to 30 days to have the violator commence mediation.

The Board does not agree with this suggestion from the Rice County Planning and Zoning Department for the following reason:

(a) The suggestion substantially changes the Rule as Proposed, and

(b) the Rule as Proposed is the minimal standard that a local government may adopt.

Rice County Planning and Zoning Department also submitted a suggestion on the removal of language from part 8400.4055 and 8400.4060.

The Board does not agree with this suggestion from the Rice County Planning and Zoning Department for the following reason:

(a) As stated in part IV.L. and M. of the Statement of Need and Reasonableness, parts 8400.4055 and 8400.4060 is required by law.

Rice County Planning and Zoning Department also suggested reducing the cost-share rates to a maximum of 50 percent for land occupiers who are cited.

The Board does not agree with this suggestion from the Rice County Planning and Zoning Department for the following reason:

(a) As stated in part IV.L. and M. of the Statement of Need and Reasonableness, parts 8400.4045 and 8400.4060 is required by law.

The remainder of Rice County Planning and Zoning Department suggestions were incorporated into the Rules as Adopted.

Nicollet County Engineer's Office submitted a suggestion to remove all public road construction from being a prohibited activity.

The Board does not agree with this suggestion from the Nicollet County Engineer's Office for the following reasons:

(a) As stated in Minnesota Statutes 1985 Supplement, Chapter 40.19, subdivision 6, road construction is not a development activity only when designed according to Department of Transportation standard specifications for construction, and

(b) by removing this section, the concern given by the Dakota Soil and Water Conservation District would not be addressed.

Wright County Attorney's Office submitted a suggestion that the civil penalty be changed to follow the procedures in Minnesota Statutes Chapter 394.

The Board does not agree with this suggestion from the Wright County Attorney's Office for the following reason:

(a) As stated in part IV.H., K. and N. of the Statement of Needs and Reasonableness, part 8400.4037, subpart 8, 8400.4050 and 8400.4065 are required by law.

Rice Creek Watershed District submitted a suggestion of requiring a cash surety to assure the compliance of the sedimentation control plan.

The Board does not agree with this suggestion from the Rice Creek Watershed District for the following reason:

(a) The suggestion substantially changes the Rule as Proposed, and

(b) the Rule as Proposed is the minimal standard that a local government may adopt.

Construction Industries Cooperative Committee submitted a suggestion to use a common sense approach of sedimentation potential on a development site.

The Board does not agree with this suggestion from the Construction Industries Cooperative Committee for the following reasons:

(a) As stated in part IV.G. of the Statement of Needs and Reasonableness, part 8400.4030, subpart 4 is required by law, and

(b) the addition of the variance procedure as recommended by Minnesota Pollution Control Agency may offer a viable alternative.

Construction Industries Cooperative Committee also suggested that the length for review of a sedimentation control plan be reduced from 28 days.

The Board does not agree with this suggestion from the Construction Industries Cooperative Committee for the following reason:

(a) The suggestion substantially changes the Rule as Proposed, and

(b) the Rule as Proposed is the minimal standard that a local government may adopt.

Construction Industries Cooperative Committee also suggested that the review would take an extended period to review the sedimentation control plan because of sending the document to St. Paul.

The Board does not agree with this suggestion from the Construction Industries Cooperative Committee for the following reason:

(a) As stated in part IV.H. of the Statement of Needs and Reasonableness, part 8400.4037, subpart 4 is required by law, and

(b) the review of the sedimentation control plan would be handled by the local government.

Minnesota Department of Natural Resources submitted a suggestion that the requirement for submission of a sedimentation control plan be raised from one acre to five acres.

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reason:

(a) As stated in part IV.G. of the Statement of Needs and Reasonableness, part 8400.4030, subpart 4 is required.

Minnesota Department of Natural Resources also submitted a suggestion that the penalty should be strengthened.

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reason:

(a) As stated in part IV.H., K. and N. of the Statement of Needs and Reasonableness, part 8400.4037, subpart 8, 8400.4050 and 8400.4065 are required by law.

Minnesota Department of Natural Resources also submitted a suggestion that specific time interval for review and updating of soil loss limits information.

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reasons:

(a) The Soil Conservation Service periodically reviews and updates all technical material, and

(b) as stated in part IV.E. of the Statement of Needs and Reasonableness, part 8400.4015, part A is required by law.

Minnesota Department of Natural Resources also suggested that the definition of soil loss limits should reflect the serious implications of some soil when introduced to water resources.

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reasons:

(a) The definition of excessive soil loss includes the evidence of sedimentation on adjoining land or in a body of water, watercourse or wetland, and

(b) as stated in part IV.B. of the Statement of Need and Reasonableness, part 8400.4002, subparts 9 and 16 are required by law.

Minnesota Department of Natural Resources also submitted a suggestion that soils heavily laden with chemicals should have lower soil loss limits.

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reasons:

(a) The definition of excessive soil loss includes the evidence of sedimentation on adjoining land or in a body of water, watercourse or wetland, and

(b) the Rule as Proposed and model ordinances are the minimal standards that a local government may adopt.

Minnesota Department of Natural Resources also submitted a suggestion that the distance of an erosion source to a potential receiving water body should be recognized as a variable which could affect the allowable erosion rate.

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reasons:

(a) As stated in part IV.G. of the Statement of Needs and Reasonableness, part 8400.4030, subpart 1 is required by law, and

(b) the Rule as Proposed and model ordinances are the minimal standards that a local government may adopt.

Minnesota Department of Natural Resources also submitted a suggestion that the rule as proposed should recognize differences in the sensitivity of receiving bodies of water.

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reasons:

(a) As stated in Minnesota Statutes, 1986, Chapter 40.21, subdivision 2, the model ordinances, thus the minimal standards, must use the soil loss tolerance for each soil series described in the field office technical guide to determine soil loss limits; and

(b) the Rules as Proposed and model ordinances are the minimal standards that a local government may adopt.

Minnesota Department of Natural Resources also submitted a suggestion that the language in parts 8400.4055 and 8400.4060 be rewritten to exclude the use of "shall".

The Board does not agree with this suggestion from the Minnesota Department of Natural Resources for the following reason:

(a) As stated in part IV.L. and M. of the Statement of Need and Reasonableness, parts 8400.4055 and 8400.4060 are required by law.

The remainder of the Minnesota Department of Natural Resources suggestions were incorporated into the Rules as Adopted.

Soil Conservation Service submitted a suggestion to add language to the definition of conservation practice.

The Board does not agree with this suggestion from the Soil Conservation Service for the following reason:

(a) The language is contained in the definition of field office technical guide.

Soil Conservation Service also suggested that the time schedule for reviewing the sedimentation control plan be extended.

The Board does not agree with this suggestion from the Soil Conservation Service for the following reason:

(a) This review would be the responsibility of the staff.

Soil Conservation Service also suggested a revision to the amount of the penalty.

The Board does not agree with this suggestion from the Soil Conservation Service for the following reason:

(a) As stated in part IV.H., K. and N. of the Statement of Needs and Reasonableness part 8400.4037, subpart 8, 8400.4050, and 8400.4065 are required by law.

The remainder of the Soil Conservation Service suggestions were incorporated into the Rules as Adopted.

Unless otherwise stated, all incorporated language reflects those changes necessary to adopt the suggestions made by the above organizations and agencies.

The Board concludes that the changes between the Rules as Proposed and the Rules as Adopted are non-substantial for the reasons stated above.

The Board concludes from this record that the proposed rules, along with the changes proposed herein, are necessary and reasonable and that they are in the long-term best interests of the State of Minnesota. Therefore, I order the adoption of these rules, as evidenced by the Order Adopting Rules submitted with this record.

STATE OF MINNESOTA

29 August 1986
DATE

Wally Bernhardson
WALLY BERNHARDSON, CHAIR
SOIL AND WATER CONSERVATION BOARD

9/5/86
DATE

Ronald Nargang
RONALD NARGANG, DIRECTOR
SOIL AND WATER CONSERVATION BOARD

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules
of the Department of Agriculture
Governing Control of Excessive Soil Loss
(Minnesota Rules Pts. 8400.4000 - 8400.4080).

ORDER ADOPTING
RULES

Notice of the Soil and Water Conservation Board's intent to adopt the above-entitled rule without a public hearing was published in the State Register on April 14, 1986, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, Section 14.22 on April 9, 1986. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than 25 written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rule,

NOW, THEREFORE, IT IS ORDERED that this rule identified as the Rule Governing Control of Excessive Soil Loss adopted this 15th day of September, 1986, pursuant to authority vested in me by Minnesota Statutes, section 40.21.

STATE OF MINNESOTA

Ron Nargang

RON NARGANG
DIRECTOR
SOIL AND WATER CONSERVATION BOARD

In the Matter of the Proposed Adoption of
Rules of the Department of
Agriculture Governing Control of
Excessive Soil Loss
(Minnesota Rules Pts. 8400.4000 - 8400.4080)

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Jon Murphy, do hereby declare that I have examined the rule and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Jon Murphy
Special Assistant Attorney General

Date: 9/15/86

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules of
The Soil and Water Conservation Board
Governing Control of Excessive Soil Loss
(Minnesota Rules pts. 8400.4000 - 8400.4080)

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 24 day of March, 1986, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Ronald Nargang

Director, Soil and Water Conservation Board

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed
Rules of the Soil and Water Conservation Board
Governing Control of Excessive Soil Loss
(Minnesota Rules pts. 8400.4000 - 8400.4080)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 10:00 a.m., this 9th day of April, 1986.

Carol Milligan

SF-00006-05 (4/86)

DEPARTMENT : OF AGRICULTURE

STATE OF MINNESOTA

Office Memorandum

DATE : September 15, 1986

TO : Rita Desmond
Administration - Finance Division
Office of the Attorney General

FROM : Carol Milligan, Management Analyst
Planning Division

PHONE : 296-6909

SUBJECT : Review of Rules Governing Excessive Soil Loss Control (Minnesota Rules 8400.4000 - 8400.4080)

The Department of Agriculture adopted the above-mentioned rules pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

The Department has fulfilled the requirements of Minnesota Statutes, section 14.115, subd. 4, by notifying small businesses of the expected impact of the rule in the Notice of Intent to Adopt Rules Without a Public Hearing.

The Department received fewer than 25 requests for a public hearing and no one requested notification of submission to the Attorney General.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Rollin Dennistoun, Deputy Commissioner
Jon Murphy, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Ron Nargang, Director, Soil and Water Conservation Board
Kim Benson, Soil and Water Conservation Board

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies).

B. Order Adopting the Rule (two copies).

C. Certificate of Boards Resolution Adopting Rule.

D. Notice of Intent to Solicit Outside Opinion.

E. Order for Notice of Intent to Adopt Rule Without Public Hearing.

F. Certificate of Boards Authorizing Resolution.

G. Notice of Intent to Adopt a Rule Without Public Hearing.

H. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing.

I. Mailing List Certificate.

J. Rule as Proposed.

K. Findings of Fact and Conclusions.

L. Statement of Need and Reasonableness.

M. Comments Received.

N. Certificate of Compliance with Rulemaking Procedures.

Rules were attached w/ mailing & Notice of Intent

Findings of Fact explain why certain comments were not incorporated ~~to~~ into the rule but does not address why it did incorporate other material.

One comment inquired whether in § 4055 "...an executive branch of govt is telling a judicial branch exactly how to operate. It also implies that the judge must choose between 2 plans. There is no mention of compromise solutions or judicial alternative." (Rice County)

Since this is only an ~~voluntary~~ adoption ~~only~~ applicable if it is voluntarily adopted, ~~does~~ would the statutes apply only to the local govts who do not ~~pass~~ adopt the soil loss ordinance. Once an ordinance is adopted, would the statutes become invalid?

The reason I question, is because there are differences between the rule & the statute. Also, the rule does not only "restate" the current statute (as the standard of need & reasonableness states) but one difference is between the words "landowner" & "land occupier". 1985 Suppl. in Sects 40.23, 40.242 & 40.244 uses the word landowner. The rule uses "occupier."

My concern is answered. In 4002 sbp 12. Owner is included in the definition of "occupier."