

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

1649

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: December 26, 1989

TO: Wayne A. Edgerton
RIM Reserve Coordinator
155 So. Wabasha Ave., Suite 104 (55107)

FROM: CHRISTIE B. ELLER CBE
Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9421

SUBJECT: In the Matter of the Adopted Rule Relating to
Reinvest in Minnesota Conservation Reserve Program

The above-referenced rule has been approved as to its legality by the Attorney General on December 26, 1989.

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

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of tne notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Carl M. Conney " "

Board of Water and Soil Resources

Adopted Permanent Rules Relating to Reinvest in Minnesota Conservation Reserve Program

Rules as Adopted

8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to 40.46 and 84.95, authorize the board, in cooperation with districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring drained wetlands, establishing windbreaks adjacent to highways, or enhancing and protecting other private lands. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the board and district boards in implementing Minnesota Statutes, sections 40.40 to 40.46.

8400.3030 DEFINITIONS.

Subpart 1. and 2. [Unchanged].

Subp. 3. [See Repealer.]

Subp. 4. to 6. [Unchanged.]

Subp. 6a. **Authorized farm partnership.** "Authorized farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 7. [See Repealer.]

Subp. 8. **Board.** "Board" means the Board of Water and Soil Resources.

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

Subp. 10. to 17. [Unchanged.]

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining,

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dredging, filling, leveling, or other manipulation ~~sufficient~~ in an attempt to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.

Subp. 18. to 20. [Unchanged.]

Subp. 20a. **Family farm partnership.** "Family farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 21. to 30. [Unchanged.]

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm partnership, authorized farm partnership, family farm corporation, authorized farm corporation, estate, or testamentary trust, who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. [Unchanged.]

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is incorporated by reference. In addition, land immediately surrounding a sinkhole is marginal agricultural land.

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock on and before June 2, 1989, which has not been cultivated or interseeded at least twice during the period of 1976 to 1985, and therefore is not considered to be in agricultural crop production.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means

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land used for pasture in land capability classes III to VIII as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference.

Subp. 34. to 36. [Unchanged.]

Subp. 37. **Present value.** "Present value" means the value today of an amount that would have been received later, at a discount rate established annually by the board.

Subp. 38. to 39. [Unchanged.]

Subp. 39a. **Public water.** "Public water" means waters and wetlands as defined in Minnesota Statutes, section 105.37 and inventoried under Minnesota Statutes, section 105.391. A copy of the inventory is available in the district office.

Subp. 40. **Restored wetland.** "Restored wetland" means a drained wetland restored under the RIM reserve program if the wetland meets the definition of a wetland in subpart 48.

Subp. 41. **RIM reserve conservation practice specifications.** "RIM reserve conservation practice specifications" means the current edition of the board's publication containing detailed descriptions of the approved conservation practices found in part 8400.3660. This publication is subject to frequent change, is available at the state law library and at district offices, and is incorporated by reference.

Subp. 42. **RIM reserve program.** "RIM reserve program" means the Reinvest in Minnesota Resources Conservation Reserve program established in Minnesota Statutes, sections 40.41 to 40.46.

Subp. 42a. **Riparian.** "Riparian" means cropland adjacent to public water. For the RIM reserve program, the cropland must begin within 100 feet of the boundary of the public water to be eligible.

Subp. 43. [Unchanged.]

Subp. 43a. **Sensitive groundwater area.** "Sensitive groundwater area" means a geographic area defined by natural features where there is a significant risk of groundwater

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degradation from activities conducted at or near the land surface. These areas may be identified by mapping or other appropriate methods determined by the commissioner of natural resources and the board. Wellhead protection areas may be designated as a sensitive groundwater area.

Subp. 44. to 46. [Unchanged.]

Subp. 47. [See Repealer.]

Subp. 48. [Unchanged.]

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The board shall allocate funds to participating district boards based on the following criteria:

A. and B. [Unchanged.]

C. the potential for restoring drained wetlands;

D. to F. [Unchanged.]

The allotted funds may be increased, decreased, or shifted by the board as necessary to maximize the use of funds among districts.

8400.3100 ADMINISTRATION OF FUNDS.

The participating district board is responsible for administration of the funds in accordance with Minnesota Statutes, sections 40.40 to 40.46 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

8400.3110 EASEMENT DURATION.

The board may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on drained wetlands or land for highway windbreak purposes must be of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years.

8400.3130 PRIORITY SETTING.

Annually, before considering any applications from landowners, the participating district board shall call a screening committee meeting. The screening committee must

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establish priority areas within the district. Establishment of priority areas must be based on the following criteria:

A. the priorities established by the board;

B. the location of high priority soil erosion or water quality problem areas in the district as outlined in the district comprehensive and annual plans;

C. the potential of the land for fish and wildlife production, reducing soil erosion, and protecting water quality;

D. recommendations from technical agricultural and natural resource experts familiar with the district;

E. the established priorities of the agencies and organizations represented on the screening committee;

F. maximizing the benefits of current programs administered by the United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and Minnesota Department of Natural Resources; and

G. the amount of RIM reserve program funds available.

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Land eligible for the RIM reserve program must meet at least one of the following criteria:

A. and B. [Unchanged.]

C. The land is drained wetland and cropland adjacent to the drained wetland, with up to four acres of adjacent cropland for each acre of restored wetland. In selecting drained wetlands for enrollment, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

D. [Unchanged.]

E. The land is cropland in a sensitive groundwater area.

F. The land is cropland riparian to public waters.

G. The land is a woodlot on agricultural land.

H. The land is an abandoned building site on agricultural land.

I. The land is a pastured hillside.

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In addition, eligible land must have all of the following characteristics:

(1) The land has been in agricultural crop production for at least two years during the period 1981 to 1985, except drained wetlands, woodlots, abandoned building sites, or hillsides used for pasture.

(2) The land has been owned by the landowner ~~on January 1, 1985, or owned by the landowner~~, or a parent or other blood relative of the landowner, for at least one year before the date of application.

(3) The land must be at least five acres in size, except for a highway windbreak, woodlot, abandoned building site, or must be a whole field as defined by the Agricultural Stabilization and Conservation Service.

(4) The land must not be within 200 feet of any building.

(5) The land must not be set-aside, enrolled, or diverted under another federal or state government crop land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal water bank.

(6) The land must be physically possible to crop, except for drained wetlands, woodlots, abandoned building sites, and hillsides used for pasture.

8400.3200 MAXIMUM ENROLLMENT.

The total land for which a landowner may receive compensation from the RIM reserve program may not exceed 20 percent of the average farm size in the county where the land is being enrolled according to the average size determined by the most recent United States Department of Agriculture Census of Agriculture.

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program must submit an application to the appropriate district office in which the land is located, during the application

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period established by the board, and on forms provided by the board. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application. The supportive information includes, but is not limited to:

A. crop history of the parcel;

B. aerial photographs or a sketch of the parcel; and

C. description of other land owned or leased as part of the same farm operation at the time of application.

The district technician shall make an initial determination of easement eligibility at the time of application. Applications having questionable eligibility must be referred to the district board for eligibility determination. Providing proof of eligibility is the responsibility of the landowner. The district technician shall develop a cost estimate for the easement and approved practices for all eligible applications. Other organizations and agencies may be requested to provide technical assistance in preparing cost estimates.

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall develop a conservation agreement for all approved applications in which the landowner agrees to:

A. [Unchanged.]

B. establish and maintain permanent cover and other conservation practices on the land subject to the easement as described in the conservation plan approved by the board, which is incorporated into the conservation easement;

C. convey to the state a permanent wetland restoration easement when a drained wetland is being restored;

D. not convert to agricultural crop production, pasture, or introduced pasture any other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if those lands support natural vegetation or have not been used in agricultural crop production, pasture, or introduced pasture except that land may be converted to pasture if done according to an approved

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district conservation plan;

E. the enforcement of the terms of the easement and agreements as provided in Minnesota Statutes, section 40.43, subdivision 9, or other relief authorized by law;

F. not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the board;

G. not produce agricultural crops, unless approved by the board for wildlife management purposes;

H. not graze livestock, except easements secured from the 1986, 1987, and 1988 application periods, may be grazed with the prior written approval of the board, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

I. and J. [Unchanged.]

K. notify the board in writing within 30 days after the conveyance of all or part of the title or interest in the land in which the easement area is located by providing the names and addresses of the grantees, assignees, or heirs;

L. to N. [Unchanged.]

O. allow the board and the board's employees and agents to enter the easement area for the purposes of inspection or enforcement of the terms and conditions of the easement; and

P. [Unchanged.]

The conservation agreement must be recordable and on forms approved by the board.

8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

After the conservation agreement has been developed by the district board, the unsigned agreement must be processed as follows:

A. It must be reviewed by a field representative of the board.

B. It must have a review and determination by the board.

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C. The landowner must be notified of the board's decision.

D. If it is approved by the board, the agreement must be given to the landowner for signature.

E. The agreement must be returned to the board for signature by the necessary state officials and encumbrance of state funds.

F. A copy of the signed agreement must be provided to the landowner.

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the board's signing of the conservation agreement, the landowner, at the landowner's expense, shall deliver to the district office an original up-to-date abstract of title or registered property abstract, with certifications as to liens, bankruptcies, real estate taxes, and judgments. The landowner must have good and marketable title, not subject to any prior liens or encumbrances, as determined by the Attorney General, or an insurable title under a title insurance policy, not subject to any prior liens or encumbrances, approved by the Attorney General. Any title defect, liens, or encumbrances must be promptly removed or corrected by the landowner including, but not limited to, the following: lien waivers, releases or consent and subrogation from mortgagees, release or satisfaction of judgments, and receipt for payment of delinquent real estate taxes. The landowner's abstract of title must be returned to the landowner.

8400.3500 EASEMENT CONVEYANCE.

Upon delivery and recording of a properly executed conservation easement, approved by the board, and the vesting of the easement interest in the board, not subject to any prior lien or encumbrances, payment must be made for the easement to the landowner, landowner's designees, assignees, or heirs.

8400.3530 PAYMENT RATES.

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Subpart 1. [Unchanged.]

Subp. 2. **New easements.** For permanent easements, payments are per acre figures derived from county average cash rent adjusted for countywide variations in estimated township market value. The figures are established on a township basis with the lower of the following two values selected as the payment:

A. 100 percent of the present value of the derived per acre figure calculated for perpetuity; or

B. 90 percent of estimated township market value.

This payment method provides higher values for better quality land and ensures that payments do not exceed estimated market values. A schedule of payments for townships and unorganized areas is developed annually and is available at district offices or from the board.

For limited duration easements not less than 20 years in length, payments are based on 65 percent of the permanent easement payment.

Payment rates for eligible lands without a cropping history must be based on a percentage of the permanent easement payment rate as determined by the board annually. There must be no compensation for the value of any buildings or other structures that may be on the easement area.

Payment rates may be modified prior to the sign up by the board if the board determines the rates established above do not reflect current market values based on the most recent land value market indicators.

The board shall annually establish the discount rate to be used for calculating present value. Average cash rent and estimated market value are based on information provided by the Department of Revenue in cooperation with local assessors.

Subp. 3. and 4. [Unchanged.]

8400.3600 EASEMENT RENEWAL AND CONVERSION.

A. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by

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agreement of the board and the landowner under the rules in force at that time. The board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of agriculture and natural resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF EASEMENTS.

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

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

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

B. a letter from the district board recommending the change;

C. a letter from the Department of Natural Resources wildlife manager recommending the change; and

D. other supporting documents, including:

1. an aerial photo identifying the requested change;

2. a soil survey map of the area;

3. cropping history information; and

4. other pertinent documentation that will support the request.

The board reserves the right to require special provisions

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to ensure at least equal resource value as a condition of approving the request. The board must be compensated for all damages and loss of benefits to the conservation easement as well as administrative expenses and costs incurred in the alteration, release, or termination of an easement. Priority must be given to obtaining eligible replacement land rather than cash payment for damage or loss of benefits.

8400.3630 CRITERIA FOR APPROVED PRACTICES.

Approved practices must be enduring in nature and have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or creation or improvement of fish and wildlife habitat. The list is contained in part 8400.3660 and is further specified in the RIM reserve conservation practice specifications. Practices under this program must be designed for a minimum effective life of 20 years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits. Production practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for RIM reserve cost-sharing, but are allowed on enrolled acres if they are included in the conservation plan and approved by the board in cooperation with the commissioner of natural resources.

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

Subpart 1. [Unchanged.]

Subp. 2. **Costs for approved practices.**

A. The district board shall review the receipts and invoices provided by the landowner to determine the actual cost eligible for RIM reserve payment. If the district board determines that the claims are reasonable and necessary, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the board. If the district board determines that certain claims are not justified or not eligible, it shall

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notify the landowner in writing of the unjustified claim within 30 days. The landowner may request reconsideration of this determination by the district board within 15 days of receipt of the determination. If additional eligible costs are justified, the district board shall then recommend payment for the approved amount. The board reserves the right to determine whether claims for payment are reasonable and necessary.

B. and C. [Unchanged.]

D. The board may encumber additional funds for eligible costs if the additional encumbrance is consistent with the purpose and policy of the RIM reserve program and the maximum amounts in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2), are not exceeded.

Subp. 3. and 4. [Unchanged.]

8400.3730 FAILURE OF APPROVED PRACTICES.

A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the board that additional RIM reserve funds be encumbered for reinstallation of the approved practices. The encumbrance must comply with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2), and cannot exceed the amount encumbered for the initial installation. In no case may a district board provide financial assistance to a landowner for the reapplication of approved practices that were removed, altered, or failed due to improper maintenance during the term of the easement.

8400.3830 VIOLATIONS.

The board may enforce the easement and agreement by the legal action in items A and B.

A. A landowner who violates the terms of a conservation easement or agreement under this chapter, or induces, assists, or allows another to do so, is liable to the state for treble damages if the trespass is willful, but liable

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by Revisor _____

for double damages only if the trespass is not willful. The amount of damages is the amount needed to make the state whole or the amount the landowner has gained due to the violation, whichever is greater.

B. Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 40.41 to 40.46 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

The district board may recommend to the board appropriate measures to be taken to correct violations. Easements remain in effect even if maintenance violations have occurred.

8400.3860 MONITORING.

The board may require reports from the district to monitor the progress of the RIM reserve program and the use of funds. The reports must be on forms provided by the board.

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the board. The ledger must specify the names of the landowners with whom the easements have been developed, the approved practices involved, the status of permanent cover establishment, the total of funds encumbered and expended, the size and type of easements, and their effective date.

8400.3930 RECONSIDERATION AND REVIEW.

Subpart 1. to 3. [Unchanged.]

Subp. 4. [See Repealer.]

REPEALER. Minnesota Rules, parts 8400.3030, subparts 3, 7, and 47; 8400.3760; and 8400.3930, subpart 4; are repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 26 1989

Joan Anderson Growe
Secretary of State

12:00 PM

APPROVED AS TO FORM AND LEGALITY

Dec 26 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Christie B Eller
ASSISTANT ATTORNEY GENERAL

CH

RULE REVIEW CHECKLIST

File No. 1649

Docket No. 05-0609-0986

DATE RECEIVED 12-12-89

ADOPTED W/O HEARING X

REVIEW DATE 12-21-89

EMERGENCY RULE _____

DUE DATE 12-26-89

TO REVISOR ON 12-13-89

REVISOR APPROVED _____

APPROVED 12-26-89 CBE

REVISOR DISAPPROVED _____

DISAPPROVED _____

FILED W/SEC. OF STATE _____

WITHDRAWN _____

RETURNED TO AGENCY _____

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4 Rule as adopted (4 copies)

_____ Notice to Solicit Outside Information/Opinion (if applicable)
_____ Date published in State Register
_____ Comments

_____ Petition for Adoption of a Rule (if applicable)

✓ Board's Authorizing Resolution
June 28, 1989 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
40.45 Statutory Authority
doesn't effect Small Business Statement
NA Expenditure of public money statement
8-25-89 Signature

✓ Statement of Need and Reasonableness (if applicable)
no fees
✓ Small Business Statement - indicates will not have a negative impact.
_____ Fees - § 16A.128

_____ Affidavit of Mailing Notice of Intent to Adopt Rule
Sept 1, 1989 Date 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
Sept 11, 1989 Date 30/25 days before adoption

✓ 180-day deadline from:
_____ Effective date of law requiring rule (14.12) (both rules) not mandated amendments doesn't apply
✓ end of comment period (§ 14.26) (rules without hearing) Oct 1 - Dec 12
_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
Nov 22, 89 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
11-27-89 Date

✓ Written requests, submissions or comments

_____ Declaration of attorney
Carl M. Conney Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

_____ Aff. of Mailing Notice to Atty. Gen. (if applicable)

12-18-89

Stat. Authority 40.45

The board may adopt rules to implement 40.41 to 40.45. The rules must include standards for tree planting so that planting does not conflict with existing electrical lines . . . .

Findings of Fact

missing 2010.0300 K (7)

requests for a hearing or submissions to AG - no statement to that effect

modifications

Statement of need justifys most changes do to a statutory change in the 1989 legislation of 40.43 - The board shall implement sections 40.40 to 40.44

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha Ave., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767

December 11, 1989

TO: Patty Nolte
Administration - Finance Division
Office of Attorney General, 4th Floor
525 Park Ave., St. Paul

FROM: Wayne A. Edgerton
RIM Reserve Coordinator Wayne A. Edgerton

SUBJECT: Review of Proposed Rule Governing RIM Reserve Program

The Board of Water and Soil Resources adopted the above mentioned rule 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.

If you have any questions please feel free to contact me at 296-0880.

cc. Jim Birkholz, Director
Carl Conney, Special Assist. Attorney General

Enc.

Regional Offices

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1819 Bemidji Ave.
Bemidji, MN 56601
218-755-3963

Northeast Region
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218-723-4752

West Central Region
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Staples, MN 56479
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South Central Region
Box 756
New Ulm, MN 56073
507-354-2196

Southeast Region
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Rochester, MN 55904
507-285-7458

Southwest Region
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1400 E. Lyon Street
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507-537-7260

East Central Region
Southbridge Office Building
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St. Paul, MN 55107
612-296-3767

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CERTIFICATE OF THE

BOARD OF WATER AND SOIL RESOURCES

AUTHORIZING RESOLUTION

I, Donald Ogaard, do hereby certify that I am a member and the Chairman, of the Board of Water and Soil Resources, 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 Water and Soil Resources duly and properly called and held on the 28th day of June, 1989, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that Jim Birkholz, executive director, of the Board of Water and Soil Resources, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to amend a rule without a public hearing governing the Reinvest In Minnesota Reserve Program to all persons who have registered their names with the Board for that purpose and publish the Notice and rule in the State Register, and to preform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 28th day of June, 1989.

Donald Ogaard, Chairman
Board of Water and Soil Resources

Attest by one other Board member

6-28-89

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Proposed Rules
of the Board of Water and Soil Resources
Governing the Reinvest in
Minnesota (RIM) Reserve Program

Minnesota Rules 8400.3000 - 8400.3930

STATEMENT OF NEED AND REASONABLENESS

I. General Need and Authority for Rules 8400.3000

Minnesota Statutes, sections 40.40 et. seq. and 84.95 authorize the Board of Water and Soil Resources in cooperation with the soil and water conservation districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring altered wetlands, or establishing windbreaks adjacent to highways or enhancing and protecting other private lands. Minnesota Statutes, section 40.45 authorize the board to adopt rules to implement this program. Minnesota Rules parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the Board of Water and Soil Resources, and soil and water conservation district boards in implementing Minnesota Statutes, section 40.40 et. seq.

The proposed revisions insure that:

1. Legislative, administrative and technical changes required by the 1989 amendments to the RIM Law are incorporated; and
2. local program administrators, cooperating agencies and applicants are provided with clear guidance concerning enrollment requirements and administrative procedures for the RIM Reserve program.

II. Small Business Impact. This is strictly a voluntary program and will not have a negative impact on small business.

III. Need and Reasonableness of each Rule Part Revised

A. The following revisions are required due to the change of program authority from the Commissioner of Agriculture to the Board.

8400.3030 Subp.8; Subp. 9; (this relates to Subp. 3) Subp. 37; Subp. 41;
8400.3060 (commissioner to board)
8400.3230 (except B)
8400.3400 B; F; G; H; K (commissioner to board); O; and final sentence.
8400.3430 B; C; D; E
8400.3460
8400.3500
8400.3530 (commissioner to board)
8400.3600
8400.3610
8400.3630
8400.3700 A. (commissioner to board); D
8400.3730
8400.3830 (first sentence)
8400.3860
8400.3900
8400.3930 Subp. 4.

B. The following additional revisions have been made:

8400.3030 Definitions

Subp. 3 and Subp. 17a - The 1989 legislative amendments made this definition change. This reflects the legislation.

Subp. 6a - The new term "authorized farm partnership" is included to clarify its addition to the definition of landowner in Subp. 31.

Subp. 7 and Subp. 33 - MN Statutes, section 41B.039 was amended in 1989 to eliminate references to the RIM program, therefore the references to the beginning farmer program have been dropped.

Subp. 20a - The new term "Family farm partnership" is included to clarify its addition to the definition of landowner in Subp. 31.

Subp. 31 - This addition reflects the amendment made in 1989 legislative session.

Subp. 33 - All references to the RIM Reserve program responsibilities to the state beginning farmer program were eliminated by the 1989 legislature. Therefore, the beginning farmer program references have been omitted from this rule.

Subp. 33a and Subp. 33b - These two definitions are included to clarify the types of land eligible for the new pastured hillside category described in 8400.3160(I).

Subp. 39a - This definition is needed to explain and clarify Subp. 42.

Subp. 40 - Use of the word drained rather than altered is required due to the legislative definition in Subp. 17a of drained wetland.

Subp. 42 - This is required due to new section in law.

Subp. 42a - This definition is included to clarify the new eligibility category described in 8400.3160 (F).

Subp. 47 - The definition for state board is now included in Subp. 8.

8400.3060(C) Criteria For Allocation of Funds

This change is needed to clarify that this section relates to drained wetlands only.

The additional language in the later part of this section clarifies that if funds are to be manipulated, only the board will have the authority to do this.

8400.3100 - This addition is required due to the new section in the law.

8400.3110 - This change is required by the 1989 RIM law amendments.

8400.3130(A) Priority Setting

Due to the new eligibility categories added in the 1989 legislative session, it is necessary for the board to establish the priorities due to the limited funds available. The board will be allocating the RIM funds based on these priorities.

8400.3160 (all except 4) - These changes have been made to make the rule consistent with the requirement of the 1989 amendments to the RIM law.

8400.3160(4) Criteria For Eligible Land

This additional limitation is required to protect rural buildings from the potential fire hazard of large fields of vegetation. This limit reflects an agreement the board has developed with rural insurance companies.

8400.3200 - This change has been made to make the rule consistent with the 1989 amendment to the RIM law.

8400.3230(B) - This change has been made to make the rule consistent with the 1989 amendments to the RIM law.

8400.3400(C) - These changes reflect the revised definition of drained wetland in the RIM law and clarifies the provisions of the new eligibility category described in Subparts 33a and 33b.

8400.3400(D) Application By Landowners

The addition of pasture is consistent with the limits imposed on cropland to restrict the landowner from enrolling a parcel only to shift the problem to another parcel not now pastured. This does allow the shift if the new pasture is managed according to an approved conservation plan.

8400.3400(H) - This is made to make the rule consistent with the 1989 amendment to the RIM law.

8400.3400(K) - This is a provision of the easement that allows the state to track new owners of RIM acres. Presently being administered this way.

8400.3430(A) Procedures For Review of Conservation Agreement

This additional word clarifies the level of board review to field level. The program is presently being administered this way.

8400.3530 Payment Rates

The payment rate for non-cropland acres must be established. This allows the board to set these rates based on the best available information. Assistance in this process is provided by Department of Revenue, State Planning and the University of Minnesota.

8400.3610 - This addition is required due to an 1989 amendment in the RIM Reserve law allowing alteration, release or termination of easements. This section sets forth the criteria and steps for this action to take place. Coordination with the commissioners of agriculture and natural resources is required in order to provide guidance.

8400.3700(A) Establishment of Approved Practices

The language at the end of this segment allows the board to deny unnecessary reimbursement claims that is inconsistent with the approved and legal cost sharable items established by the board and state law.

8400.3830 - This addition is required due to a 1989 amendment in the RIM law and reflects the language found in the law.

Repealer - All repealers reflect 1989 amendments made in the RIM law or the beginning farmer program law and are therefore consistent with existing statutory requirements.

WAE:lb
cc: Jim Birkholz, Pat Bloomgren, Carol Milligan

Board of Water and Soil Resources

Proposed Permanent Rules Relating to Reinvest in Minnesota Conservation Reserve Program

Rules as Proposed

8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to ~~40.45~~ 40.46 and 84.95, authorize the ~~commissioner~~ board, in cooperation with ~~the state board,~~ districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring ~~altered~~ drained wetlands, ~~or~~ establishing windbreaks adjacent to highways, or enhancing and protecting other private lands. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the ~~commissioner, state~~ board, and district boards in implementing Minnesota Statutes, sections 40.40 to ~~40.45~~ 40.46.

8400.3030 DEFINITIONS.

Subpart 1. and 2. [Unchanged].

Subp. 3. [See Repealer.]

Subp. 4. to 6. [Unchanged.]

Subp. 6a. **Authorized farm partnership.** "Authorized farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 7. [See Repealer.]

Subp. 8. **~~Commissioner~~ Board.** ~~"Commissioner" means the commissioner of agriculture.~~ "Board" means the Board of Water and Soil Resources.

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

Subp. 10. to 17. [Unchanged.]

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Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.

Subp. 18. to 20. [Unchanged.]

Subp. 20a. **Family farm partnership.** "Family farm partnership" has the meaning given in Minnesota Statutes, section 500.24, subdivision 2.

Subp. 21. to 30. [Unchanged.]

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm partnership, authorized farm partnership, family farm corporation, ~~or~~ authorized farm corporation, estate, or testamentary trust, who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. [Unchanged.]

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. ~~For the beginning farmer program, "marginal agricultural land" means land in the land capability classes VI to VIII, as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference.~~ The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the ~~commissioner and the state~~ board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is

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incorporated by reference.

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock on and before June 2, 1989, which has not been cultivated or interseeded at least twice during the period of 1976 to 1985, and therefore is not considered to be in agricultural crop production.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means land used for pasture in land capability classes III to VIII as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference.

Subp. 34. to 36. [Unchanged.]

Subp. 37. **Present value.** "Present value" means the value today of an amount that would have been received later, at a discount rate established annually by the ~~commissioner~~ board.

Subp. 38. to 39. [Unchanged.]

Subp. 39a. **Public water.** "Public water" means waters and wetlands as defined in Minnesota Statutes, section 105.37 and inventoried under Minnesota Statutes, section 105.391. A copy of the inventory is available in the district office.

Subp. 40. **Restored wetland.** "Restored wetland" means ~~an altered~~ a drained wetland restored under the RIM reserve program if the wetland meets the definition of a wetland in subpart 48.

Subp. 41. **RIM reserve conservation practice specifications.** "RIM reserve conservation practice specifications" means the current edition of the ~~Minnesota Department of Agriculture~~ board's publication containing detailed descriptions of the approved conservation practices found in part 8400.3660. This publication is subject to frequent change, is available at the state law library and at district offices, and is incorporated by reference.

Subp. 42. **RIM reserve program.** "RIM reserve program" means the Reinvest in Minnesota Resources Conservation Reserve program established in Minnesota Statutes, sections 40.41 to ~~40.45~~ 40.46.

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Subp. 42a. **Riparian.** "Riparian" means cropland adjacent to public water. For the RIM reserve program, the cropland must begin within 100 feet of the boundary of the public water to be eligible.

Subp. 43. [Unchanged.]

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

Subp. 44. to 46. [Unchanged.]

Subp. 47. [See Repealer.]

Subp. 48. [Unchanged.]

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The ~~commissioner~~ board shall allocate funds to participating district boards ~~through the state board~~ based on the following criteria:

A. and B. [Unchanged.]

C. the potential for restoring drained wetlands;

D. to F. [Unchanged.]

The allotted funds may be increased, decreased, or shifted by the board as necessary to maximize the use of funds among districts.

8400.3100 ADMINISTRATION OF FUNDS.

The participating district board is responsible for administration of the funds in accordance with Minnesota Statutes, sections 40.40 to ~~40.45~~ 40.46 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

8400.3110 EASEMENT DURATION.

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The board may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement acquired on drained wetlands or land for highway windbreak purposes must be of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years.

8400.3130 PRIORITY SETTING.

Annually, before considering any applications from landowners, the participating district board shall call a screening committee meeting. The screening committee must establish priority areas within the district. Establishment of priority areas must be based on the following criteria:

A. the priorities established by the board;

B. the location of high priority soil erosion or water quality problem areas in the district as outlined in the district comprehensive and annual plans;

~~B~~ C. the potential of the land for fish and wildlife production, reducing soil erosion, and protecting water quality;

~~C~~ D. recommendations from technical agricultural and natural resource experts familiar with the district;

~~D~~ E. the established priorities of the agencies and organizations represented on the screening committee;

~~E~~ F. maximizing the benefits of current programs administered by the United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and Minnesota Department of Natural Resources; and

~~F~~ G. the amount of RIM reserve program funds available.

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Land eligible for the RIM reserve program must meet at least one of the following criteria:

A. and B. [Unchanged.]

C. The land is ~~an altered~~ drained wetland and cropland adjacent to the ~~altered~~ drained wetland, with up to four acres of adjacent cropland for each acre of restored

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wetland ~~restored~~. In selecting drained wetlands for enrollment, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

D. [Unchanged.]

E. The land is cropland in a sensitive groundwater area.

F. The land is cropland riparian to public waters.

G. The land is a woodlot on agricultural land.

H. The land is an abandoned building site on agricultural land.

I. The land is a pastured hillside.

In addition, eligible land must have all of the following characteristics:

(1) ~~a crop history~~ The land has been in agricultural crop production for at least two years during the period 1981 to 1985~~;~~, except drained wetlands, woodlots, abandoned building sites, or hillsides used for pasture.

(2) ~~was~~ The land has been owned by the landowner on January 1, 1985, or ~~was~~ owned by the landowner, or a parent or other blood relative of the landowner, for at least ~~three years~~ one year before the date of application~~;~~.

(3) ~~is~~ The land must be at least five acres in size, except for a highway windbreak, woodlot, abandoned building site, or ~~is~~ must be a whole field as defined by the Agricultural Stabilization and Conservation Service~~;~~.

(4) ~~is~~ The land must not be within 200 feet of any building.

(5) The land must not be set-aside, enrolled, or diverted under another federal or state government crop land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal water bank~~;~~ ~~and~~.

~~(5)~~ ~~is~~ (6) The land must be physically possible to crop, except for ~~altered~~ drained wetlands, woodlots, abandoned building sites, and hillsides used for pasture.

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8400.3200 MAXIMUM ENROLLMENT.

The total ~~enrolled~~ land ~~of~~ for which a landowner ~~in~~ may receive compensation from the RIM reserve program may not exceed 20 percent of the ~~landowner's total agricultural land acreage in Minnesota, if the landowner owns at least 200 acres of agricultural land. If a landowner owns less than 200 acres of agricultural land, the amount that may be enrolled in the conservation reserve is:~~

~~A. all agricultural land owned, if 20 acres or less, or~~

~~B. if the total agricultural land owned is more than 20 acres but less than 200 acres, 20 acres plus ten percent of the total~~ average farm size in the county where the land is being enrolled according to the average size determined by the most recent United States Department of Agriculture Census of Agriculture.

~~The total enrolled land of a landowner in the beginning farmer program may not exceed 20 percent of the total agricultural acreage of the enrolled farm operation.~~

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program must submit an application to the appropriate district office in which the land is located, during the application period established by the ~~commissioner~~ board, and on forms provided by the ~~commissioner~~ board. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application. The supportive information includes, but is not limited to:

A. crop history of the parcel;

B. ~~total agricultural acres owned by the applicant in Minnesota;~~

~~C.~~ aerial photographs or a sketch of the parcel; and

~~D~~ C. description of other land owned or leased as part of the same farm operation at the time of application.

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The district technician shall make an initial determination of easement eligibility at the time of application. Applications having questionable eligibility must be referred to the district board for eligibility determination. Providing proof of eligibility is the responsibility of the landowner. The district technician shall develop a cost estimate for the easement and approved practices for all eligible applications. Other organizations and agencies may be requested to provide technical assistance in preparing cost estimates.

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall develop a conservation agreement for all approved applications in which the landowner agrees to:

A. [Unchanged.]

B. establish and maintain permanent cover and other conservation practices on the land subject to the easement as described in the conservation plan approved by the ~~commissioner~~ board, which is incorporated into the conservation easement;

C. convey to the state a permanent wetland restoration easement when ~~an altered~~ a drained wetland is being restored;

D. not convert to agricultural crop production, pasture, or introduced pasture any other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if those lands support natural vegetation or have not been used in agricultural crop production, pasture, or introduced pasture except that land may be converted to pasture if done according to an approved district conservation plan;

E. the enforcement of the terms of the easement and agreements ~~by an action for specific performance, a mandatory injunction, or for damages in an amount not to exceed the total amount paid by the state to the landowner, with interest from the date of each default under the agreement or any combination of these remedies~~ as provided in Minnesota Statutes, section 40.43, subdivision 9, or other relief authorized by law;

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F. not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the ~~commissioner~~ board;

G. not produce agricultural crops, unless approved by the ~~commissioner~~ board for wildlife management purposes;

H. not graze livestock, except easements secured from the 1986, 1987, and 1988 application periods, may be grazed with the prior written approval of the ~~commissioner~~ board, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

I. and J. [Unchanged.]

K. notify the ~~commissioner~~ board in writing ~~at least~~ within 30 days ~~before~~ after the conveyance of all or part of the title or interest in the land in which the easement area is located by providing the names and addresses of the grantees, assignees, or heirs;

L. to N. [Unchanged.]

O. allow the ~~commissioner~~ board and the ~~commissioner's~~ board's employees and agents to enter the easement area for the purposes of inspection or enforcement of the terms and conditions of the easement; and

P. [Unchanged.]

The conservation agreement must be recordable and on forms approved by the ~~commissioner~~ board.

8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

After the conservation agreement has been developed by the district board, the unsigned agreement must be processed as follows:

A. It must be reviewed by a field representative of the ~~state~~ board.

B. It must have a review and determination by the ~~commissioner~~ board.

C. The landowner must be notified of the ~~commissioner's~~ board's decision.

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D. If it is approved by the ~~commissioner~~ board, the agreement must be given to the landowner for signature.

E. The agreement must be returned to the ~~commissioner~~ board for signature by the necessary state officials and encumbrance of state funds.

F. A copy of the signed agreement must be provided to the landowner.

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the ~~commissioner's~~ board's signing of the conservation agreement, the landowner, at the landowner's expense, shall deliver to the district office an original up-to-date abstract of title or registered property abstract, with certifications as to liens, bankruptcies, real estate taxes, and judgments. The landowner must have good and marketable title, not subject to any prior liens or encumbrances, as determined by the Attorney General, or an insurable title under a title insurance policy, not subject to any prior liens or encumbrances, approved by the Attorney General. Any title defect, liens, or encumbrances must be promptly removed or corrected by the landowner including, but not limited to, the following: lien waivers, releases or consent and subrogation from mortgagees, release or satisfaction of judgments, and receipt for payment of delinquent real estate taxes. The landowner's abstract of title must be returned to the landowner.

8400.3500 EASEMENT CONVEYANCE.

Upon delivery and recording of a properly executed conservation easement, approved by the ~~commissioner~~ board, and the vesting of the easement interest in the ~~commissioner~~ board, not subject to any prior lien or encumbrances, payment must be made for the easement to the landowner, landowner's designees, assignees, or heirs.

8400.3530 PAYMENT RATES.

Subpart 1. [Unchanged.]

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Subp. 2. **New easements.** For permanent easements, payments are per acre figures derived from county average cash rent adjusted for countywide variations in estimated township market value. The figures are established on a township basis with the lower of the following two values selected as the payment:

A. 100 percent of the present value of the derived per acre figure calculated for perpetuity; or

B. 90 percent of estimated township market value.

This payment method provides higher values for better quality land and ensures that payments do not exceed estimated market values. A schedule of payments for townships and unorganized areas is developed annually and is available at district offices or from the ~~commissioner~~ board.

For limited duration easements not less than 20 years in length, payments are based on 65 percent of the permanent easement payment.

Payment rates for eligible lands without a cropping history must be based on a percentage of the permanent easement payment rate as determined by the board annually. There must be no compensation for the value of any buildings or other structures that may be on the easement area.

Payment rates may be modified prior to the sign up by the ~~commissioner~~ board if the ~~commissioner~~ board determines the rates established above do not reflect current market values based on the most recent land value market indicators.

The ~~commissioner~~ board shall annually establish the discount rate to be used for calculating present value. Average cash rent and estimated market value are based on information provided by the Department of Revenue in cooperation with local assessors.

Subp. 3. and 4. [Unchanged.]

8400.3600 EASEMENT RENEWAL AND CONVERSION.

A. When a conservation easement of limited duration expires, a new conservation easement and agreement for an additional period of not less than 20 years may be acquired by

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agreement of the ~~commissioner~~ board and the landowner under the rules in force at that time. The ~~commissioner~~ board may adjust payment rates as a result of renewing an agreement and conservation easement only after examining the condition of the established cover, conservation practices, and land values.

B. The easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of ~~the Departments of~~ agriculture and natural resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF EASEMENTS.

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

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

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

B. a letter from the district board recommending the change;

C. a letter from the Department of Natural Resources wildlife manager recommending the change; and

D. other supporting documents, including:

1. an aerial photo identifying the requested change;

2. a soil survey map of the area;

3. cropping history information; and

4. other pertinent documentation that will support the request.

The board reserves the right to require special provisions

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to ensure at least equal resource value as a condition of approving the request. The board must be compensated for all damages and loss of benefits to the conservation easement as well as administrative expenses and costs incurred in the alteration, release, or termination of an easement. Priority must be given to obtaining eligible replacement land rather than cash payment for damage or loss of benefits.

8400.3630 CRITERIA FOR APPROVED PRACTICES.

Approved practices must be enduring in nature and have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or creation or improvement of fish and wildlife habitat. The list is contained in part 8400.3660 and is further specified in the RIM reserve conservation practice specifications. Practices under this program must be designed for a minimum effective life of 20 years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits. Production practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for RIM reserve cost-sharing, but are allowed on enrolled acres if they are included in the conservation plan and approved by the ~~commissioner~~ board in cooperation with the commissioner of natural resources.

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

Subpart 1. [Unchanged.]

Subp. 2. **Costs for approved practices.**

A. The district board shall review the receipts and invoices provided by the landowner to determine the actual cost eligible for RIM reserve payment. If the district board determines that the claims are reasonable and **~~practical~~** necessary, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the ~~commissioner~~ board. If the district

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board determines that certain claims are not justified or not eligible, it shall notify the landowner in writing of the unjustified claim within 30 days. The landowner may request reconsideration of this determination by the district board within 15 days of receipt of the determination. If additional eligible costs are justified, the district board shall then recommend payment for the approved amount. The board reserves the right to determine whether claims for payment are reasonable and necessary.

B. and C. [Unchanged.]

D. The ~~commissioner~~ board may encumber additional funds for eligible costs if the additional encumbrance is consistent with the purpose and policy of the RIM reserve program and the maximum amounts in Minnesota Statutes, section 40.43, subdivision 6, clauses ~~1 and 2~~ (1) and (2), are not exceeded.

Subp. 3. and 4. [Unchanged.]

8400.3730 FAILURE OF APPROVED PRACTICES.

A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the ~~commissioner~~ board that additional RIM reserve funds be encumbered for reinstallation of the approved practices. The encumbrance must comply with the limits in Minnesota Statutes, section 40.43, subdivision 6, clauses (1) and (2), and cannot exceed the amount encumbered for the initial installation. In no case may a district board provide financial assistance to a landowner for the reapplication of approved practices that were removed, altered, or failed due to improper maintenance during the term of the easement.

8400.3830 VIOLATIONS.

The ~~commissioner~~ board may enforce the easement and agreement by the ~~following~~ legal action: in items A and B.

A. ~~specific performance;~~ A landowner who violates the

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

B. ~~mandatory injunction;~~ Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce Minnesota Statutes, sections 40.41 to 40.46 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

~~C.--damages in an amount not to exceed the total amount paid by the state to the landowner from RIM reserve funds, with interest from the date of each default; or~~

~~D.--any combination of the above remedies.~~

The district board may recommend to the ~~commissioner~~ board appropriate measures to be taken to correct violations. Easements remain in effect even if maintenance violations have occurred.

8400.3860 MONITORING.

The ~~commissioner through the state~~ board may require reports from the district to monitor the progress of the RIM reserve program and the use of funds. The reports must be on forms provided by the ~~commissioner~~ board.

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the ~~commissioner~~ board. The ledger must specify the names of the landowners with whom the easements have been developed, the approved practices involved, the status of permanent cover establishment, the total of funds encumbered and expended, the size and type of easements, and their effective

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date.

8400.3930 RECONSIDERATION AND REVIEW.

Subpart 1. to 3. [Unchanged.]

Subp. 4. [See Repealer.]

REPEALER. Minnesota Rules, parts 8400.3030, subparts 3, 7, and 47; 8400.3760; and 8400.3930, subpart 4; are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Reinvest in Minnesota Conservation Reserve Program

AGENCY: Board of Water and Soil Resources

MINNESOTA RULES: Chapter 8400

INCORPORATIONS BY REFERENCE:

Part 8400.3030, subparts 33 and 41: List of soil mapping units indicative of marginal agricultural land provided by Board of Water and Soil Resources; current edition of Board of Water and Soil Resources publication containing detailed descriptions of approved conservation practices.

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

Office of the Revisor of Statutes
Administrative Rules

Craig E. Lindeke
Senior Assistant Revisor
296-0946

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

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BOARD OF WATER
& SOIL RESOURCES

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PLANNING DIVISION

November 1, 1989

Ms. Carol Milligan
Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

RE: File No. 1521

Dear Ms. Milligan:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Craig E. Lindeke

B. American Petroleum Institute, Installation of Underground Petroleum Storage Systems, API/RP 1615 (November 1987);

C. American Petroleum Institute, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, API/RP 1632 (December 1987); and

D. American Petroleum Institute, Cleaning Petroleum Storage Tanks, API/RP 2015 (September 1985).

Subp. 3. **NFPA documents.** The following documents are also available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269:

A. National Fire Protection Association, Flammable and Combustible Liquids Code, NFPA 30 (August 7, 1987);

B. National Fire Protection Association, Automotive and Marine Service Station Code, NFPA 30A (June 10, 1987);

C. National Fire Protection Association, Cleaning Small Tanks and Containers, NFPA 327 (1982); and

D. National Fire Protection Association, Uniform Fire Code, NFPA Article 79 (1988).

Subp. 4. **PEI document.** The following document is also available from the Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101: Petroleum Equipment Institute, Recommended Practices for the Installation of Liquid Storage Systems, PEI/RP 100 (1987).

Board of Water and Soil Resources

Proposed Permanent Rules Relating to Reinvest in Minnesota Conservation Reserve Program

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Board of Water and Soil Resources intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statute* Chapter 40.45.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Wayne Edgerton, RIM Coordinator
Board of Water and Soil Resources
155 S. Wabasha, Suite 104
St. Paul, Minnesota 55107
(612) 296-0880

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Wayne Edgerton, RIM Coordinator, Board of Water and Soil Resources, 155 S. Wabasha, Suite 104, St. Paul, Minnesota 55107, (612) 296-0880, upon request.

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.

The Statement of Need and Reasonableness also indicates that since this is a voluntary program that this rule will not have a negative impact on small business.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Wayne Edgerton.

Dated: 24 August 1989

James R. Birkholz
Executive Director

Rules as Proposed

8400.3000 AUTHORITY.

Minnesota Statutes, sections 40.40 to ~~40.45~~ 40.46 and 84.95, authorize the ~~commissioner~~ board, in cooperation with ~~the state board,~~ districts, state and local private groups, and state and federal agencies, to implement a program of retiring certain agricultural land from crop production and establishing on that land permanent vegetative cover, restoring ~~altered~~ drained wetlands, ~~or~~ establishing windbreaks adjacent to highways, or enhancing and protecting other private lands. Parts 8400.3000 to 8400.3930 provide procedures and criteria to be followed by the ~~commissioner, state~~ board~~,~~ and district boards in implementing *Minnesota Statutes*, sections 40.40 to ~~40.45~~ 40.46.

8400.3030 DEFINITIONS.

Subpart 1. and 2. [Unchanged].

Subp. 3. [See Repealer.]

Subp. 4. to 6. [Unchanged.]

Subp. 6a. **Authorized farm partnership.** "Authorized farm partnership" has the meaning given in *Minnesota Statutes*, section 500.24, subdivision 2.

Subp. 7. [See Repealer.]

Subp. 8. **~~Commissioner~~ Board.** ~~"Commissioner" means the commissioner of agriculture.~~ "Board" means the Board of Water and Soil Resources.

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

Subp. 10. to 17. [Unchanged.]

Subp. 17a. **Drained wetland.** "Drained wetland" means a former natural wetland that has been altered by draining, dredging, filling, leveling, or other manipulation sufficient to render the land suitable for agricultural crop production. The alteration must have occurred before December 23, 1985, and must be a legal alteration as determined by the commissioner of natural resources.

Subp. 18. to 20. [Unchanged.]

Subp. 20a. **Family farm partnership.** "Family farm partnership" has the meaning given in *Minnesota Statutes*, section 500.24, subdivision 2.

Subp. 21. to 30. [Unchanged.]

Subp. 31. **Landowner.** "Landowner" means an individual, family farm, family farm partnership, authorized farm partnership, family farm corporation, ~~or~~ authorized farm corporation, estate, or testamentary trust, who either owns eligible land or is purchasing eligible land under a contract for deed in Minnesota.

Subp. 32. [Unchanged.]

Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" for the RIM reserve program means land with cropland soils that are inherently unproductive for agricultural crop production or subject to significant potential soil productivity loss from erosion. ~~For the beginning farmer program, "marginal agricultural land" means land in the land capability classes VI to VIII, as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference.~~ The state board shall provide districts with a list of soil mapping units indicative of marginal agricultural land. Districts may change the list as necessary to reflect local soil characteristics. Changes must be approved by the ~~commissioner and the state~~ board. This list, with changes, is available at the state law library and at district offices, is subject to frequent change, and is incorporated by reference.

Subp. 33a. **Pasture.** "Pasture" means land used for grazing by domestic livestock on and before June 2, 1989, which has not been cultivated or interseeded at least twice during the period of 1976 to 1985, and therefore is not considered to be in agricultural crop production.

Subp. 33b. **Pastured hillside.** "Pastured hillside" means land used for pasture in land capability classes III to VIII as defined by the United States Department of Agriculture, Agricultural Handbook Number 210. This publication is available at the state law library and at district offices, is not subject to frequent change, and is incorporated by reference.

Subp. 34. to 36. [Unchanged.]

Subp. 37. **Present value.** "Present value" means the value today of an amount that would have been received later, at a discount rate established annually by the ~~commissioner~~ board.

Subp. 38. to 39. [Unchanged.]

Subp. 39a. **Public water.** "Public water" means waters and wetlands as defined in *Minnesota Statutes*, section 105.37 and inventoried under *Minnesota Statutes*, section 105.391. A copy of the inventory is available in the district office.

Subp. 40. **Restored wetland.** "Restored wetland" means ~~an altered~~ a drained wetland restored under the RIM reserve program if the wetland meets the definition of a wetland in subpart 48.

Subp. 41. **RIM reserve conservation practice specifications.** "RIM reserve conservation practice specifications" means the current edition of the ~~Minnesota Department of Agriculture~~ board's publication containing detailed descriptions of the approved conservation practices found in part 8400.3660. This publication is subject to frequent change, is available at the state law library and at district offices, and is incorporated by reference.

Subp. 42. **RIM reserve program.** "RIM reserve program" means the Reinvest in Minnesota Resources Conservation Reserve program established in *Minnesota Statutes*, sections 40.41 to ~~40.45~~ 40.46.

Subp. 42a. **Riparian.** "Riparian" means cropland adjacent to public water. For the RIM reserve program, the cropland must begin within 100 feet of the boundary of the public water to be eligible.

Subp. 43. [Unchanged.]

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

Subp. 44. to 46. [Unchanged.]

Subp. 47. [See Repealer.]

Subp. 48. [Unchanged.]

8400.3060 CRITERIA FOR ALLOCATION OF FUNDS.

The ~~commissioner~~ board shall allocate funds to participating district boards ~~through the state board~~ based on the following criteria:

A. and B. [Unchanged.]

C. the potential for restoring drained wetlands;

D. to F. [Unchanged.]

The allotted funds may be increased, decreased, or shifted by the board as necessary to maximize the use of funds among districts.

8400.3100 ADMINISTRATION OF FUNDS.

The participating district board is responsible for administration of the funds in accordance with *Minnesota Statutes*, sections 40.40 to ~~40.45~~ 40.46 and other applicable laws. The district board may make recommendations concerning use of these funds in accordance with parts 8400.3000 to 8400.3930.

8400.3110 EASEMENT DURATION.

The board may acquire conservation easements on eligible land. An easement may be permanent or of limited duration. An easement

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acquired on drained wetlands or land for highway windbreak purposes must be of permanent duration. An easement of limited duration may not be acquired if it is for a period less than 20 years.

8400.3130 PRIORITY SETTING.

Annually, before considering any applications from landowners, the participating district board shall call a screening committee meeting. The screening committee must establish priority areas within the district. Establishment of priority areas must be based on the following criteria:

A. the priorities established by the board;

B. the location of high priority soil erosion or water quality problem areas in the district as outlined in the district comprehensive and annual plans;

~~B~~ C. the potential of the land for fish and wildlife production, reducing soil erosion, and protecting water quality;

~~C~~ D. recommendations from technical agricultural and natural resource experts familiar with the district;

~~D~~ E. the established priorities of the agencies and organizations represented on the screening committee;

~~E~~ F. maximizing the benefits of current programs administered by the United States Agricultural Stabilization and Conservation Service, United States Fish and Wildlife Service, and Minnesota Department of Natural Resources; and

~~F~~ G. the amount of RIM reserve program funds available.

8400.3160 CRITERIA FOR ELIGIBLE LAND.

Land eligible for the RIM reserve program must meet at least one of the following criteria:

A. and B. [Unchanged.]

C. The land is ~~an altered~~ drained wetland and cropland adjacent to the ~~altered~~ drained wetland, with up to four acres of adjacent cropland for each acre of restored wetland ~~restored~~. In selecting drained wetlands for enrollment, the highest priority must be given to wetlands with a cropping history during the period 1976 to 1985.

D. [Unchanged.]

E. The land is cropland in a sensitive groundwater area.

F. The land is cropland riparian to public waters.

G. The land is a woodlot on agricultural land.

H. The land is an abandoned building site on agricultural land.

I. The land is a pastured hillside.

In addition, eligible land must have all of the following characteristics:

(1) ~~a crop history~~ The land has been in agricultural crop production for at least two years during the period 1981 to 1985~~;~~, except drained wetlands, woodlots, abandoned building sites, or hillsides used for pasture.

(2) ~~was~~ The land has been owned by the landowner on January 1, 1985, or ~~was~~ owned by the landowner, or a parent or other blood relative of the landowner, for at least ~~three years~~ one year before the date of application~~;~~.

(3) ~~is~~ The land must be at least five acres in size, except for a highway windbreak, woodlot, abandoned building site, or ~~is~~ must be a whole field as defined by the Agricultural Stabilization and Conservation Service~~;~~.

(4) ~~is~~ The land must not be within 200 feet of any building.

(5) The land must not be set-aside, enrolled, or diverted under another federal or state government crop land retirement program including, but not limited to, federal conservation reserve, federal production adjustment set-aside, or state or federal water bank~~; and~~.

~~(5) is~~ (6) The land must be physically possible to crop, except for ~~altered~~ drained wetlands, woodlots, abandoned building sites, and hillsides used for pasture.

8400.3200 MAXIMUM ENROLLMENT.

The total ~~enrolled~~ land ~~of~~ for which a landowner ~~in~~ may receive compensation from the RIM reserve program may not exceed 20 percent of the ~~landowner's total agricultural land acreage in Minnesota, if the landowner owns at least 200 acres of agricultural land. If a landowner owns less than 200 acres of agricultural land, the amount that may be enrolled in the conservation reserve is:~~

~~A. all agricultural land owned, if 20 acres or less; or~~

~~B. if the total agricultural land owned is more than 20 acres but less than 200 acres, 20 acres plus ten percent of the total~~

average farm size in the county where the land is being enrolled according to the average size determined by the most recent United States Department of Agriculture Census of Agriculture.

~~The total enrolled land of a landowner in the beginning farmer program may not exceed 20 percent of the total agricultural acreage of the enrolled farm operation.~~

8400.3230 APPLICATION BY LANDOWNERS.

Landowners interested in participating in the RIM reserve program must submit an application to the appropriate district office in which the land is located, during the application period established by the ~~commissioner~~ board, and on forms provided by the ~~commissioner~~ board. The landowner must complete the application in its entirety along with any supportive information required for proper consideration of the application. The supportive information includes, but is not limited to:

A. crop history of the parcel;

B. ~~total agricultural acres owned by the applicant in Minnesota;~~

~~C.~~ aerial photographs or a sketch of the parcel; and

~~D~~ C. description of other land owned or leased as part of the same farm operation at the time of application.

The district technician shall make an initial determination of easement eligibility at the time of application. Applications having questionable eligibility must be referred to the district board for eligibility determination. Providing proof of eligibility is the responsibility of the landowner. The district technician shall develop a cost estimate for the easement and approved practices for all eligible applications. Other organizations and agencies may be requested to provide technical assistance in preparing cost estimates.

8400.3400 CONSERVATION AGREEMENT FOR EASEMENT.

The district board shall develop a conservation agreement for all approved applications in which the landowner agrees to:

A. [Unchanged.]

B. establish and maintain permanent cover and other conservation practices on the land subject to the easement as described in the conservation plan approved by the ~~commissioner~~ board, which is incorporated into the conservation easement;

C. convey to the state a permanent wetland restoration easement when ~~an altered~~ a drained wetland is being restored;

D. not convert to agricultural crop production, pasture, or introduced pasture any other land supporting natural vegetation owned or leased as part of the same farm operation at the time of application, if those lands support natural vegetation or have not been used in agricultural crop production, pasture, or introduced pasture except that land may be converted to pasture if done according to an approved district conservation plan;

E. the enforcement of the terms of the easement and agreements ~~by an action for specific performance, a mandatory injunction, or for damages in an amount not to exceed the total amount paid by the state to the landowner, with interest from the date of each default under the agreement or any combination of these remedies~~ as provided in *Minnesota Statutes*, section 40.43, subdivision 9, 8or other relief authorized by law;

F. not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the ~~commissioner~~ board;

G. not produce agricultural crops, unless approved by the ~~commissioner~~ board for wildlife management purposes;

H. not graze livestock, except easements secured from the 1986, 1987, and 1988 application periods, may be grazed with the prior written approval of the ~~commissioner~~ board, after consultation with the commissioner of the Department of Natural Resources, in the case of severe drought or a local emergency;

I. and J. [Unchanged.]

K. notify the ~~commissioner~~ board in writing ~~at least~~ within 30 days ~~before~~ after the conveyance of all or part of the title or interest in the land in which the easement area is located by providing the names and addresses of the grantees, assignees, or heirs;

L. to N. [Unchanged.]

O. allow the ~~commissioner~~ board and the ~~commissioner's~~ board's employees and agents to enter the easement area for the purposes of inspection or enforcement of the terms and conditions of the easement; and

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P. [Unchanged.]

The conservation agreement must be recordable and on forms approved by the ~~commissioner~~ board.

8400.3430 PROCEDURE FOR REVIEW OF CONSERVATION AGREEMENT.

After the conservation agreement has been developed by the district board, the unsigned agreement must be processed as follows:

A. It must be reviewed by a field representative of the ~~state~~ board.

B. It must have a review and determination by the ~~commissioner~~ board.

C. The landowner must be notified of the ~~commissioner's~~ board's decision.

D. If it is approved by the ~~commissioner~~ board, the agreement must be given to the landowner for signature.

E. The agreement must be returned to the ~~commissioner~~ board for signature by the necessary state officials and encumbrance of state funds.

F. A copy of the signed agreement must be provided to the landowner.

8400.3460 ABSTRACT AND TITLE REQUIREMENTS.

After notification of the ~~commissioner's~~ board's signing of the conservation agreement, the landowner, at the landowner's expense, shall deliver to the district office an original up-to-date abstract of title or registered property abstract, with certifications as to liens, bankruptcies, real estate taxes, and judgments. The landowner must have good and marketable title, not subject to any prior liens or encumbrances, as determined by the Attorney General, or an insurable title under a title insurance policy, not subject to any prior liens or encumbrances, approved by the Attorney General. Any title defect, liens, or encumbrances must be promptly removed or corrected by the landowner including, but not limited to, the following: lien waivers, releases or consent and subrogation from mortgagees, release or satisfaction of judgments, and receipt for payment of delinquent real estate taxes. The landowner's abstract of title must be returned to the landowner.

8400.3500 EASEMENT CONVEYANCE.

Upon delivery and recording of a properly executed conservation easement, approved by the ~~commissioner~~ board, and the vesting of the easement interest in the ~~commissioner~~ board, not subject to any prior lien or encumbrances, payment must be made for the easement to the landowner, landowner's designees, assignees, or heirs.

8400.3530 PAYMENT RATES.

Subpart 1. [Unchanged.]

Subp. 2. **New easements.** For permanent easements, payments are per acre figures derived from county average cash rent adjusted for countywide variations in estimated township market value. The figures are established on a township basis with the lower of the following two values selected as the payment:

A. 100 percent of the present value of the derived per acre figure calculated for perpetuity; or

B. 90 percent of estimated township market value. This payment method provides higher values for better quality land and ensures that payments do not exceed estimated market values. A schedule of payments for townships and unorganized areas is developed annually and is available at district offices or from the ~~commissioner~~ board.

For limited duration easements not less than 20 years in length, payments are based on 65 percent of the permanent easement payment.

Payment rates for eligible lands without a cropping history must be based on a percentage of the permanent easement payment rate as determined by the board annually. There must be no compensation for the value of any buildings or other structures that may be on the easement area.

Payment rates may be modified prior to the sign up by the ~~commissioner~~ board if the ~~commissioner~~ board determines the rates established above do not reflect current market values based on the most recent land value market indicators.

The ~~commissioner~~ board shall annually establish the discount rate to be used for calculating present value. Average cash rent and estimated market value are based on information provided by the Department of Revenue in cooperation with local assessors.

Subp. 3. and 4. [Unchanged.]

8400.3600 EASEMENT RENEWAL AND CONVERSION.

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

B. The easement duration may be lengthened through mutual agreement with the board in consultation with the commissioners of ~~the Departments of~~ agriculture and natural resources if they determine that the changes effectuate the purpose of the program or to facilitate its administration.

8400.3610 ALTERATION, RELEASE, OR TERMINATION OF EASEMENTS.

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

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

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

B. a letter from the district board recommending the change;

C. a letter from the Department of Natural Resources wildlife manager recommending the change; and

D. other supporting documents, including:

1. an aerial photo identifying the requested change;

2. a soil survey map of the area;

3. cropping history information; and

4. other pertinent documentation that will support the request.

The board reserves the right to require special provisions to ensure at least equal resource value as a condition of approving the request. The board must be compensated for all damages and loss of benefits to the conservation easement as well as administrative expenses and costs incurred in the alteration, release, or termination of an easement. Priority must be given to obtaining eligible replacement land rather than cash payment for damage or loss of benefits.

8400.3630 CRITERIA FOR APPROVED PRACTICES.

Approved practices must be enduring in nature and have as their primary purpose the control of soil erosion or sedimentation, protection or improvement of water quality, or creation or improvement of fish and wildlife habitat. The list is contained in part 8400.3660 and is further specified in the RIM reserve conservation practice specifications. Practices under this program must be designed for a minimum effective life of 20 years, be nonproduction practices, and have specifications providing for the use of plant species and construction techniques that provide quality fish and wildlife benefits. Production practices that do not qualify as approved practices include, but are not limited to, Christmas tree plantations and fruit orchards. Food plots are not eligible for RIM reserve cost-sharing, but are allowed on enrolled acres if they are included in the conservation plan and approved by the ~~commissioner~~ board in cooperation with the commissioner of natural resources.

8400.3700 ESTABLISHMENT OF APPROVED PRACTICES.

Subpart 1. [Unchanged.]

Subp. 2. **Costs for approved practices.**

A. The district board shall review the receipts and invoices provided by the landowner to determine the actual cost eligible for RIM reserve payment. If the district board determines that the claims are reasonable and ~~practical~~ necessary, it shall recommend payment to the landowner by submitting a completed certification of practice completion and a cost-share voucher to the ~~commissioner~~ board. If the district board determines that certain claims are not justified or not eligible, it shall notify the landowner in writing of the unjustified claim within 30 days. The landowner may request reconsideration of this determination by the district board within 15 days of receipt of the determination. If additional eligible costs are justified, the district board shall then recommend payment for the approved amount. The board reserves the right to determine whether claims for payment are reasonable and necessary.

B. and C. [Unchanged.]

D. The ~~commissioner~~ board may encumber additional funds for eligible costs if the additional encumbrance is consistent with

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the purpose and policy of the RIM reserve program and the maximum amounts in *Minnesota Statutes*, section 40.43, subdivision 6, clauses ~~1 and 2~~ (1) and (2), are not exceeded.

Subp. 3. and 4. [Unchanged.]

8400.3730 FAILURE OF APPROVED PRACTICES.

A landowner is not in violation of the conservation easement if the failure of approved practices was caused by reasons beyond the landowner's control such as extreme weather conditions. In these instances, the district board may recommend to the ~~commissioner~~ board that additional RIM reserve funds be encumbered for reinstallation of the approved practices. The encumbrance must comply with the limits in *Minnesota Statutes*, section 40.43, subdivision 6, clauses (1) and (2), and cannot exceed the amount encumbered for the initial installation. In no case may a district board provide financial assistance to a landowner for the reapplication of approved practices that were removed, altered, or failed due to improper maintenance during the term of the easement.

8400.3830 VIOLATIONS.

The ~~commissioner~~ board may enforce the easement and agreement by the ~~following~~ legal action~~:~~ in items A and B.

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

B. ~~mandatory injunction;~~ Upon the request of the board, the attorney general may commence an action for specific performances, injunctive relief, damages, including attorney fees, and any other appropriate relief to enforce *Minnesota Statutes*, sections 40.41 to 40.46 in district court in the county where all or part of the violation is alleged to have been committed, or where the landowner resides or has a principal place of business.

~~C. damages in an amount not to exceed the total amount paid by the state to the landowner from RIM reserve funds, with interest from the date of each default; or~~

~~D. any combination of the above remedies.~~

The district board may recommend to the ~~commissioner~~ board appropriate measures to be taken to correct violations. Easements remain in effect even if maintenance violations have occurred.

8400.3860 MONITORING.

The ~~commissioner through the state~~ board may require reports from the district to monitor the progress of the RIM reserve program and the use of funds. The reports must be on forms provided by the ~~commissioner~~ board.

8400.3900 DISTRICT BOARD RECORDS.

The district shall maintain a current ledger of easements on forms provided by the ~~commissioner~~ board. The ledger must specify the names of the landowners with whom the easements have been developed, the approved practices involved, the status of permanent cover establishment, the total of funds encumbered and expended, the size and type of easements, and their effective date.

8400.3930 RECONSIDERATION AND REVIEW.

Subpart 1. to 3. [Unchanged.]

Subp. 4. [See Repealer.]

REPEALER. *Minnesota Rules*, parts 8400.3030, subparts 3, 7, and 47; 8400.3760; and 8400.3930, subpart 4; are repealed.

Board of Water and Soil Resources

In the Matter of the Proposed Adoption of the Rule of the State Board of Water and Soil Resources Governing the Reinvest In Minnesota (RIM) Reserve Program	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Board of Water and Soil Resources intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statute Chapter 40.45.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

(4) Any person may make a written request for a public hearing on the rule within the 30-day commet period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (5) (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(8) Comments or written requests for a public hearing must be submitted to:

Wayne Edgerton, RIM Coordinator
Board of Water and Soil Resources
155 S. Wabasha, Suite 104
St. Paul, Minnesota 55107
(612)296-0880

(9) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Wayne Edgerton, RIM Coordinator, Board of Water and Soil Resources, 155 S. Wabasha, Suite 104, St. Paul, Minnesota 55107, (612)296-0880, upon request.

(14) The State of Need and Reasonableness also indicates that since this is a voluntary program that this rule will not have a negative impact on small business.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Wayne Edgerton.

8/25/89
Date

James R. Birkholz
Executive Director

In the Matter of the Proposed Adoption of the Rule of the Board of Water and Soil Resources Governing the Reinvest In Minnesota (RIM) Reserve Program

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Lorrie Bauers, being sworn, says:

That on the 1st day of September, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, persuant to Minnesota Statutes, section 14.14, subdivision 1.a. and 14.22 or 14.30, that their names be placed on the Minnesota Board of Water and Soil Resources rulemaking mailing list.

Lorrie Bauers
Lorrie Bauers
Receptionist

MARY JO ANDERSON
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNT
My commission expires 11-29-93

Subscribed and sworn to before me this 1st day of September, 1989.

Mary Jo Anderson

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

In the Matter of the Proposed Adoption of the Rule of the State Board of Water and Soil Resources Governing the Reinvest in Minnesota Conservation Reserve Program	FINDINGS OF FACT CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Board's intent to adopt the above-entitled rule was published in the State Register on Monday September 11, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on Friday September 1, 1989. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the agency.

(6) Based on the comments and evidence in the record before the agency, I find the following:

a) The drained wetland definition [8400.3030 Subp.17a] required a minor adjustment due to the new eligibility of drained wetlands without a cropping history. Specifically, alteration may not, in fact, be "sufficient" to render the land suitable for agricultural crop production. Rather, the alteration was made "in an attempt" to render the land suitable for agricultural crop production. This change is made to make this definition consistent with the new eligibility criteria for drained wetlands which no longer requires proof of cropping and is therefore not a substantial change in the rule as published.

b) The 1989 legislature added "land immediately surrounding a sinkhole" to the "Marginal agricultural land" definition [8400.3030 Subp. 33]. This change in statute was inadvertently missed in the draft rule. This omission has been corrected. Since this change is consistent with the law, this is not considered a substantial change.

c) The criteria for eligible land [8400.3160(2)] stated that ownership on January 1, 1985 was one of the qualifiers for potential enrollment. However, this date was only pertinent when that date applied to the former three year ownership requirement. Therefore, the inclusion of the January 1, 1985 date is no longer used for eligibility determination and should be eliminated. This change will not affect the implementation of the program and therefore is not a substantial change.

These changes resulted from comments received during the 30 day public review period.

(8) The above-captioned rule is needed and reasonable.

NOW THEREFORE, IT IS ORDERED that the rule identified as the Reinvest in Minnesota Conservation Reserve Program (as modified) is adopted this 22nd day of November, 1989, pursuant to authority vested in me by Minnesota Statutes, section 40.45.

(9) James R. Birkholz
Executive Director

Date: 11/22/89

Minnesota Board of Water & Soil Resources

Southbridge Office Building
155 South Wabasha Ave., Suite 104
St. Paul, Minnesota 55107

(612) 296-3767

November 27, 1989

TO: Carl Conney, A.G. Representative

FROM: Wayne A. Edgerton
RIM Reserve Coordinator

SUBJECT: Review Of Revised RIM Reserve Rules

Here are the above referenced rules for your review before sending to the Attorney General for official action. I met with Carol Milligan and I think everything is here for your review. I have all the originals of the forms and will pass them on when I receive your approval. Let me know if you have any questions or problems.

If all is O.K. with these rules you will find a form in the folder for your signature (3 originals for your signature). Thanks.

Regional Offices

Northwest Region
1819 Bemidji Ave.
Bemidji, MN 56601
218-755-3963

Northeast Region
Government Service Center
320 W. 2nd Street
Room 603
Duluth, MN 55802
218-723-4752

West Central Region
611 Iowa Avenue
Staples, MN 56479
218-894-1692

South Central Region
Box 756
New Ulm, MN 56073
507-354-2196

Southeast Region
Friedell Bldg., Room 100
1200 S. Broadway
Rochester, MN 55904
507-285-7458

Southwest Region
Box 111
1400 E. Lyon Street
Marshall, MN 56258
507-537-7260

East Central Region
Southbridge Office Building
155 South Wabasha Ave., Suite 104
St. Paul, MN 55107
612-296-3767

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Opportunity Employer

STATE OF MINNESOTA

BOARD OF WATER AND SOIL RESOURCES

In the matter of the Adoption of the Rule of the State Board of Water and Soil Resources Governing the Reinvest in Minnesota Conservation Reserve Program

DECLARATION OF COUNSEL

I, Carl M. Conney, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and supporting rulemaking record, and that, based on by examination, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the docket client code is W252-0986.

Carl M. Conney

Carl M. Conney
Special Assistant
Attorney General

Dated: Nov 29, 1989

COMMENTS

WRIGHT SOIL AND WATER CONSERVATION DISTRICT

902 Commercial Drive
Buffalo, Minnesota 55313
Telephone (612) 682-1933
682-1970

SEP 13 1989

MINNESOTA
SOIL AND WATER CONSERVATION DISTRICTS

September 12, 1989

Mr. Wayne Edgerton
RIM Coordinator
Board of Water and Soil Resources
155 S. Wabasha, Suite 104
St. Paul, MN 55107

Dear Mr. Edgerton:

The Wright Soil and Water Conservation District wishes to comment on proposed rule change contained in Chapter 8400.3400, Subpart F, lines 1-4, titled CONSERVATION AGREEMENT FOR EASEMENT. The proposed rule states that the landowner agrees to not alter wildlife habitat, natural features, or the vegetative cover and other conservation practices established in the conservation plan, except by the prior written approval of the board.

We feel the District Board should be able to give this approval. We feel that this would make the RIM Program run more efficiently. The district board could grant or deny this approval in a more timely manner. Often times the landowner will contact our office just prior to planting time, and wish to make a change (the most common example of this is the addition of a food plot). If this change needs to be routed to the BWSR for approval, often times it will be past the planting dates before this approval can be obtained. This would diminish credibility from the RIM program, and create unnecessary red tape and frustration for us and the landowner.

Another example of this is in the case of wetland restorations. Under the agreement with the U.S. Fish and Wildlife Service (F&WS), wetland restorations can be done on limited duration easements. There policy has been to do these at no cost to the landowners. This policy will convince a lot of landowners who were not interested before to do a wetland restoration on their RIM acreage. The F&WS wants to do this restorations quickly. They move in and out of areas in a short period of time. Will the BWSR be able to meet their short time frame so these can get done? We feel the District Board could conceivable obtain this approval within a day. If this approval of wetland restorations cannot be done quickly, F&WS will be gone from the area and the opportunity to restore the wetland will be gone.

Page 12, lines 26-27;

> Requiring a letter from the Department of Natural Resources (DNR) wildlife manager would be appropriate in most cases. However, when woodlots are involved, the local forester's recommendations would also be appropriate. Therefore, I suggest that you use the term Commissioner instead of wildlife manager. This would also be in keeping with the rest of the document where the DNR representative is the Commissioner of Natural Resources. (The Commissioner can then delegate to his or her agent.)

Thanks for your consideration of these comments. We wish you continued success with the RIM Reserve program. Please feel free to contact me if I can be of further service.

Sincerely,

Jerry

Gerald A. Rose
Director

cc: Bruce ZumBahlen / Management Section
Thomas Kroll

STATE OF
MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

PHONE NO. Division of Forestry FILE NO.
500 Lafayette Road, St. Paul, MN 55155-4044
612-296-4485 3480

SEP 18 1989

September 6, 1989

Mr. Wayne Edgerton, RIM Coordinator
Board of Water and Soil Resources
155 S. Wabasha, Suite 104
St. Paul, MN 55107

Dear Wayne,

Thank you for the opportunity to comment on the proposed rule changes for the Reinvest in Minnesota (RIM) Reserve program.

The overall changes are positive and I have only a few ideas for your consideration. I have attached copies of those pages of the Rule relevant to my comments.

(NO required by law)

Page 6, line 23;

Delete "woodlot" from this line. Dropping it will define a woodlot as at least 5 acres in size, the same as most other RIM Reserve parcels. Retaining it could allow even a few trees to be a woodlot, which is not practical.

Page 8, lines 21-28;

Would clearing woodland for pasture with a conservation plan be allowed under this definition? If so, we feel that this activity would not be appropriate given the conservation orientation of the program and the limited RIM Reserve funds available. Note: The sentence is quite long and a bit confusing to us.

Page 9, lines 1-4;

Now that woodlots could be included in RIM Reserve, will ongoing timber management activities require "prior written board approval" or can they be referenced as a suitable activity in the conservation plan? How will a Private Forest Management (PFM) plan from our agency be included?

DOUGLAS SOIL AND WATER CONSERVATION DISTRICT

807 Highway 29 North
Alexandria, Minnesota 56308
Telephone: (612) 762-0207 or 762-0208

MINNESOTA
SOIL AND WATER CONSERVATION DISTRICTS

September, 1989

TO: Wayne Edgerton, RIM Coordinator

RE: Comments on RIM Proposed Rule Changes

The Douglas SWCD Board of Supervisors reviewed the proposed rule changes for the RIM program on September 18, 1989, during their special meeting. The following comments are listed and also are identified by highlighted areas found on the enclosed copy.

will be done later

Page 6: line 8, item G. Definition of woodlot needed to determine eligibility.

will be done later

Page 6: line 9, item H. Definition and clarification of abandoned building needed to determine difference between any building as used on line 27 of page 6. Are abandoned and any the same building or should they be addressed separately?

Page 6: line 18-21. Clarification needed to determine if the sentence, "the land has been owned by the landowner on January 1, 1985" can be omitted or is it needed?

Page 6: line 27. Define "any".

Page 11: line 20. Clarification of the word "any".

Please call if you have any concern with the comments made.

Sincerely,

James A. Anderson
District Manager
Douglas Soil & Water Conservation District

JAA:ak
enclosure

U.S. DEPARTMENT OF AGRICULTURE **SPEED MEMO**

PART NUMBER	DATE
1	10-6-89

TO: Wayne Edgerton RIM Coord
BOWSR
St. Paul

FROM: JW. Hedtke Dist Tech
CarverSWCD
Waconia

SUBJECT: 1989 Proposed RIM Rules

MESSAGE (WRITE CONCISE MESSAGE SIGN AND FORWARD PARTS 1 AND 3 TO ADDRESSEE RETAIN PART 2.)

Attached are some comments I have on the 1989 RIM rules & associated information sheets.

RECEIVED
OCT 10 1989
BOARD OF WATER
& SOIL RESOURCES

SIGNATURE JW Hedtke

REPLY (USE THIS SPACE FOR REPLY. SIGN AND DATE. RETURN PART 3 TO SENDER. RETAIN PART 1.)

SIGNATURE | DATE

FORM AD-311 (REV. 3/81)

ADDRESSEE COPY

Comments on RIM Rules (1989 sign up)

Jim Hedtke
Carver SWCD

Section) 8400.3160 Criteria for Eligible Land

#2 Since the land must have been owned at least 1 year (as Wood Lake) is not the Jan 1, 1985 date now irrelevant?

Section) 8400.3030 Definitions

Subpart 42a. Definition of riparian

Boundary of public water is not defined. It is defined in the AP-22 yellow sheet criteria sheet. Therefore a may not be needed in the rules.

Comments on cropping history for wetlands:

May want to point out on yellow sheet AP-21 that cropping history includes the years 1976-85.

10 October 1989

To: Wayne
From: Pete Beckens, Scott SWCD
Subject: Comments on RIM Rules

8400.3000 authority change board to state board
subp. 17.A. The alteration must have occurred before December 23, 1985. Is this correct? Who cares when they were drained?

8400.3160
I. 2 eliminate on January 1, 1985

8400.3160 relating to abandoned building sites: does the 200 foot buffer zone (for insurance purposes) only relate to occupied buildings? clarify this.

8400.3530 will land under abandoned buildings be included in easement (when abandoned building sites are eligible).

In the Matter of the Proposed Adoption of the Rule of the Board of Water and Soil Resources Governing the Reinvest In Minnesota (RIM) Reserve Program

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Wayne A. Edgerton, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Statutes, section 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Board of Water and Soil Resources rulemaking mailing list is accurate, complete and current as of this 1st day of September, 1989.

Wayne A. Edgerton
Wayne A. Edgerton
RIM Reserve Coordinator

MARY JO ANDERSON
NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
My commission expires 11-29-93

Subscribed and sworn to before me this 1st day of September, 1989.

Mary Jo Anderson

Rulemaking List

Anoka County-Comm. Hlth. & Soc. Serv.
c/o Mr. Robert M. Hutchinson
Courthouse - Fourth Floor
Anoka, MN 55303

Isaak Walton League of America
Minnesota Division
590 Park Street, - #222
St. Paul, MN 55103

Kraft, Inc.
Ellen Thomas, Manager
Regulation-Industry Relations
5401 Old Orchard Road
Skokie, IL 60077

Independent Bankers of Minnesota
Mr. Norbert A. McCrady
7900 International Dr' #625
Minneapolis, MN 55425

International Ecology Society
Mr. R.J.F. Kramer, President
1471 Barclay Street
St. Paul, MN 55106-1405

Mr. Michael D. Johnson
Box 95
Blue Earth, MN 56013

Peavey Company
Mr. A. Gilbert
Box 2910
Minneapolis, MN 55402

LCRAR
Maryanne Hruby, Ex. Director
55 State Office Building
St. Paul, MN 55155-1201

INTER OFFICE

Economic Security Department
F.James Rybak, Ph.D.
690 American Center Building
150 East Kellogg
St. Paul, MN 55101

Ms. Julie Smendzuik-O-Brien
3018 Furness Court
Maplewood, MN 55109

Peterson-Biddick Company
Box 190
Wadena, MN 56482

Watkins, Inc.
Attn: L.M. Ferdinandsen
150 Liberty Street
Winona, MN 55987

Minnesota Food Association
Ms. Margo Stark
2395 University Avenue, #307
St. Paul, MN 55114

Minnesota Association of Wheat Growers
Box 189
Red Lake Falls, MN 56750

Minnesota Family Farm Law Project
1301 Minnesota Building
46 East Fourth Street
St. Paul, MN 55101

Administrative Hearings Office
Mr. Sam Ruhle
500 Flour Exchange Bldg.
310 Fourth Avenue, South
Minneapolis, MN 55415

Minnesota Farm Bureau Federation
Attn: Mr. Vern Ingvalson
P. O. Box 64370
St. Paul, MN 55164

Ecolab, Inc.
Mr. Charles McDuff
Ecolab Center
St. Paul, MN 55102

In addition, this was sent to all
91 Soil and Water Conservation Districts

CERTIFICATE OF THE

BOARD OF WATER AND SOIL RESOURCES

RESOLUTION ADOPTING THE RULE

I, Donald Ogaard, do hereby certify that I am a member and the Chairman of the Board of Water and Soil Resources, 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 Water and Soil Resources, duly and properly called and held on the 22nd day of November, 1989, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to the Reinvest In Minnesota Conservation Reserve Program is approved and adopted, pursuant to authority vested in the Board of Water and Soil Resources by Minnesota Statutes Chapter 40.45.
> James R. Birkholz, the Executive Director of the Board of Water and Soil Resources, is authorized to sign the findings of fact, conclusions, and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of November, 1989.

Donald Ogaard
Chairman of the Board

John Brooks
Attest by one other Board Member