



Excessive Soil Loss Complaints – Agricultural Activities

Interim Guide: for Counties and SWCDs without a County Soil Loss Ordinance

May 25, 2016

Background

Minnesota's soil erosion law is found in Minnesota Statutes (M.S.) sections 103F.401 through 103F.455. The law, which dates back to 1984, sets forth a strong public policy stating that a person may not cause excessive soil loss. However, the law was entirely permissive in that it only encouraged local governments to adopt soil erosion ordinances and could not be implemented without a local government ordinance. The soil erosion law was changed in 2015 when a number of revisions were made by the Legislature and approved by the Governor to broaden its applicability.

Minnesota Laws 2015, regular and 1st special sessions changed the law by: 1) repealing M.S. 103F.451 "Applicability", which eliminates the requirement that the law is only applicable with a local government ordinance; 2) creating specific Administrative Penalty Order (APO) authority in M.S. 103B.101, subd. 12a. for BWSR and counties to enforce the law; and 3) amending M.S. 103F.421 "Enforcement" to remove local enforcement only through civil penalty and to revise requirements for state cost-share of conservation practices required to correct excessive soil loss. By definition excessive soil loss means soil loss that is greater than established soil loss limits or evidenced by sedimentation on adjoining land or in a body of water.

The result of the combined changes now sets forth statewide regulation of excessive soil loss regardless of whether or not a local government has a soil loss ordinance¹.

Interim Guidance

The following procedural steps are guided by M.S. 103F.401 – 103F.455 (Soil Erosion Law), together with the companion Minnesota Rule (M.R.) Parts 8400.4000 through 8400.4080 (Excessive Soil Loss Control).

Procedural Steps for Complaints Associated with Agricultural Activities:

Step 1 - County (or SWCD, if a designated agent of the county) receives written complaint which complies with part 8400.4040, subpart 1. Complaints are confidential data and are not public information.

- a. The law allows a county to designate the SWCD as its agent for carrying out administrative and mediation duties (103F.401, subd. 8., 8400.4002, subpart 13. & 103F.405, subd. 2.). This is an option for counties that do not want to administer the law directly. M.S. section 103C.331, subd. 19 provides SWCDs authority to accept delegation from a county to administer soil and water conservation-related official controls. If delegated, then the SWCD could be the recipient of the complaint.

Step 2 - County forwards complaint to SWCD to initiate investigation and report (8400.4040, subparts 2. & 3.)

¹ Counties with an existing soil loss ordinance are Fillmore, Goodhue, Mower, Olmsted and Winona

- a. The SWCD starts a confidential file documenting correspondence and records relating to the complaint filed.
- b. SWCD contacts BWSR Board Conservationist for assistance.
- c. SWCD notifies landowner of complaint and provides opportunity for landowner to be at a site visit (8400.4040, subpart 2.).
- d. SWCD makes a site visit to investigate evidence of excessive erosion and/or sedimentation. (Permitted soil loss and sedimentation limits are defined in 8400.4025, subparts 1. & 2.)
- e. SWCD conducts an investigation in accordance with M.S. 103F.421, subd. 2. and M.R. 8400.4040, subpart 3. to evaluate and prepare a written report that includes:
 - i. Presence of rill and/or gully erosion
 - ii. Extent of adverse impacts on adjoining land or a waterbody from sedimentation
 - iii. Average rate of soil loss from water or wind erosion in tons per acre per year
 - iv. If excessive soil loss is determined, a conservation plan with practicable soil conservation practices to prevent excessive soil loss or reduce the soil loss to the most practicable extent
 - v. A summary of the findings, and a conservation plan with one or more options, as applicable

Step 3 - SWCD submits report to County and BWSR. If the report documents that excessive soil loss is not occurring, the county, or SWCD as its designated agent, dismisses the complaint.

Step 4 - If the report documents excessive soil loss, written notice, by the county, must be given to landowner, in accordance with part 8400.4040, subpart 4.

Step 5 - If the report documents excessive soil loss, then the county can choose one of the following two paths to proceed with reaching agreement on a conservation plan and timeframe for completion of corrective actions and enforcement.

The following two paths should be used until the administrative rule 8400.4000 through 8400.4080 is revised and adopted which will provide clear administrative procedures for implementing the law, as amended, on a state-wide basis the following two paths are suggested.

COUNTY PATH For counties without a local ordinance	SWCD/BWSR PATH
County adopts local Administrative Penalty Order Plan	Request SWCD/BWSR to proceed under BWSR Administrative Penalty Order Plan
1. SWCD offers technical assistance and State Cost-Share is offered for financial assistance. The SWCD and landowner are encouraged to seek additional funding, if needed, through other applicable state, federal or local programs. 2. The landowner has 90 days after the complaint is substantiated to apply for State Cost-Share program assistance or the cost-share is reduced to 50 percent, unless the	1. SWCD offers technical assistance and State Cost-Share is offered for financial assistance. The SWCD and landowner are encouraged to seek additional funding, if needed, through other applicable state, federal or local programs. 2. The landowner has 90 days after the complaint is substantiated to apply for State Cost-Share program assistance or the cost-share is reduced to 50 percent, unless the

<p>SWCD or the board approves an extension. An extension must be granted if funds are not available. (M.S. 103E.421, subd. 4.)</p> <ol style="list-style-type: none"> 3. If the landowner does not agree with SWCD findings of excessive soil loss and an associated conservation plan, the County requests the landowner to participate in a mediation process with the county, in accordance with M.S. 103F.421, subd. 3.,. 4. When State Cost-Share program funds are available and the landowner does not comply with the mediated agreement/conservation plan and recommended practicable soil conservation practices, the landowner may be subject to a County APO plan and penalty up to \$500. 5. If the landowner refuses to participate in mediation or the landowner and local government do not agree to a mediated settlement, the local government forwards the complaint to the county attorney. The county attorney may dismiss the complaint or petition for a district court hearing under M.S. 103F.425. 	<p>SWCD or the board approves an extension. An extension must be granted if funds are not available. (M.S. 103E.421, subd. 4.)</p> <ol style="list-style-type: none"> 3. If the landowner does not agree with SWCD findings of excessive soil loss and an associated conservation plan, the SWCD requests the landowner to participate in mediation process as defined in the BWSR APO plan. 4. When State Cost-Share program funds are available and the landowner does not comply with the conservation plan and recommended practicable soil conservation practices, the landowner may be subject to a BWSR APO plan and penalty up to \$500. 5. Administrative penalties may be appealed in accordance with section 116.072, as indicated in section 103B.101, subd. 12.
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Step 6 - SWCD certifies BMP installation or conservation plan completion, as applicable.

Step 7 - Structural or vegetative soil conservation practices must be recorded with the county recorder on the tracts where they occur if cost-sharing funds are issued to the landowner.

Confidential Data

Under M.S. 13.44, subd. 1 of the Minnesota Government Data Practices Act, “The identities of individuals who register complaints with government entities concerning violations of state laws or local ordinances concerning the use of real property are classified as confidential data.” Confidential data are not public, and are accessible only to BWSR or SWCD personnel whose work assignments reasonably require access, and to those authorized by state or federal law. They are not accessible to the subject of the data (i.e. the person whom the complaint is alleged against). Thus, neither the data subject, nor the public at large, can know the identity of the complainant. (The identity of the person whom the complaint is alleged against is not classified.)

Even though individuals cannot access confidential data about themselves, they have a right to know whether confidential data is maintained by BWSR or an SWCD. If an individual asks whether s/he is the subject of a property complaint, that inquiry should be confirmed, and they should be advised that the data is classified as confidential.

Please only share property complaint data with your supervisor and associated staff who are directly working on the specific complaint. SWCD staff and boards should treat this information as confidential unless advised differently by their legal counsel.

This guidance may be periodically updated as authorized via Board resolution. The most recent version is available on the BWSR website. www.bwsr.state.mn.us/soils