Part VI: Contract Maintenance

A. OPERATION AND MAINTENANCE OF PRACTICES

Conservation districts are required to develop operation and maintenance plans for each conservation practice and ensure that practices are maintained according to the plan. Plans must be prepared using information from the practice standards and specifications found in the:

- Field Office Technical Guide;
- information developed by NRCS;
- or other standards approved by the state board.

The land occupier or landowner is responsible for the operation and maintenance of practices to ensure that their conservation objective is met and the effective life, a minimum of 10 years, is achieved. **Should the land occupier or landowner fail to maintain the practices during their effective life, the land occupier or landowner is liable to the state for the full amount of financial assistance received to install and establish the practice.**

The conservation practice enters the operation and maintenance phase when it is certified as complete by the conservation district technical representative.

A. 1 Responsibilities for operation and maintenance

- Contractor: The contractor is responsible for installing a conservation practice that fully conforms to the design standards and specifications. Usually the contractor's responsibility for the work terminates when work has been completed and accepted by the contracting officer (land occupier via the district technical representative). But under certain circumstances the contractor's liability may be extended. For example the factory warranty on items, such as electric motors, may extend for a specified number of months or years. If this is so, or if a failure results from the use of material or workmanship of less quality than specified in the contract, the contractor's responsibility may extend beyond the date of certification of practice completion.

- Land occupier: The land occupier is responsible for financing and performing operation and maintenance activities on conservation practices without state cost-share assistance. If there is a malfunction or failure of the practice, the land occupier must immediately notify the conservation district technical representative.

- Conservation district: The district must determine the cause and measures that are needed to correct any malfunction or failure of the conservation practice. If design or construction is at fault the conservation district should cost share the reconstruction costs. The conservation district will supply the land occupier with the following information, where applicable:

  1. conservation practice designs that function satisfactorily with reasonable maintenance for their estimated life;
  2. complete and timely information on the expected cost of operation and maintenance in terms of time, effort, and money;
  3. a complete description of the anticipated items of operation and maintenance activities for each practice;

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Within the limits of available resources, the district will also:

4. help land occupiers schedule their operations and maintenance activities;
5. advise land occupiers on operation and maintenance techniques; and
6. make engineering surveys and designs for maintenance when needed.

A. 2 Operation and Maintenance Plans

Operation and maintenance activities for dams, channels, or other conservation practices depend on variable factors such as topography, geology, size, purpose served, or intended use. Some maintenance activities may be critically important for one or more structures but may be less important for other similar structures. Identifying operation and maintenance needs is necessary to plan and schedule effective operation and maintenance activities.

Conservation districts should prepare an operation and maintenance plan tailored to fit the conservation practice and the site where it is located. The operation and maintenance plan should be as detailed as necessary to identify all of the maintenance activities that are likely to be needed and specify how to accomplish them. The plan should be prepared and reviewed with the land occupier before installation of the conservation practices is started.

B. PRACTICE SITE INSPECTIONS

The conservation district is required to monitor all cost-share contracts by conducting periodic site inspections of conservation practices installed with cost-share funds. Conservation practices are to be inspected by the conservation district technical representative to determine that the operation and maintenance plan is being followed and that the practices have not been altered or removed.

Practice site inspections must be completed at the end of the first, fifth, and ninth years following the certified completion of the conservation practices with a minimum effective life of 10 years. For conservation practices with an effective life of greater than 10 years, the minimum practice site inspection must be completed at the end of the first year following the certified completion of the conservation practice, and at 33 percent and 66 percent intervals of the effective life and the next to the last year before the end of the minimum effective life. In addition, inspect conservation practices for damage after storms producing unusually heavy run off. The conservation district may want to perform additional site inspections on a case-by-case basis.

Minor maintenance needs can quickly become major and costly maintenance problems if they are left untreated. The conservation district technical representative should encourage the land occupier to visually inspect the practice and to contact the conservation district should a problem be suspected.

Site inspections can provide the conservation district technical representative the opportunity to discuss with the land occupier the proper management of a conservation practice. The conservation district technical representative may want to ask how the conservation practice is working and if there has been any problems. This is a good time to inquire if the land occupier is interested in installing other conservation practices, or possibly the development of a whole farm plan.

The findings of a site inspection should be documented on the practice site inspection form found later in this section.

Notes

C. CONTRACT NON-COMPLIANCE

C. 1 Procedural overview

For administrative purposes, the following terminology will be used to describe failure of the land occupier or landowner to carry out required provisions of the cost-share contract.

- *Non-compliance*
  Failure of the land occupier or landowner to carry out the provisions of the cost-share contract.

- *Violation*
  Failure of a land occupier or landowner who is in a non-compliance status to implement corrective actions within the timelines identified in the Corrective Action Plan prepared by the conservation district.

- *Corrective Actions Transmittal*
  This form notifies the land occupier and landowner that the conservation district has determined that the land occupier is not in compliance with the terms of the cost-share contract and the associated operation and maintenance plan. The notice describes what actions are required to return to compliance status.

- *Corrective Action Plan*
  This form is used to document the status of the non-compliance determination. Actions to resolve the violations are listed on the plan. In addition, this form is used by the conservation district to certify that the land occupier or landowner has failed to acknowledge and implement the corrective actions within the required timelines.

C. 2 Jurisdictional areas

Conservation districts may be involved in resolving various types of cost-share contract non-compliance issues with land occupiers or landowners. Certain issues require the conservation district have primary responsibility to resolve problems; in others, the district will play a support role.

The conservation district has primary responsibility to resolve the following non-compliant conditions where the land occupier or landowner has:

1. failed to allow the state or the conservation district technical representative access to the practice area for inspection.
2. failed to establish or maintain vegetative cover and/or structures specified in the practice standards and specification or operation and maintenance plan during the effective life of the practice.
3. caused or allowed unauthorized alteration of the cost-share practice.
4. received partial payment and failed to complete the practice.
5. failed to repair damage of the cost-share practice.

Notes

C.3 Investigations and documentation

Non-compliance situations may come to light in several ways: complaints, rumors, eyewitness reports, site investigations, and audits, to name a few. Most typically the conservation district is in the best position to learn of non-compliance and to resolve the situations quickly. Conservation districts are trusted to use their best judgment to resolve non-compliance informally where appropriate. The following procedure is designed to provide a framework to work from if non-compliance issues cannot be informally resolved, and to help conservation districts to be thorough and reasonably uniform in conducting investigations.

1. If the initial investigation, including conversations with the land occupier or landowner, turns up an obvious situation not in compliance with the cost-share contract, and the land occupier/land owner agrees to take immediate corrective action, document this decision, and follow up to see that corrective actions were taken.

2. After learning of potential non-compliance, make sure that the following are investigated:
   - review of applicable law and rule;
   - review project file contents, including a review of the contract language and conservation practice, and operation and maintenance plan;
   - do an on-site investigation, including taking photographs and completing a practice site inspection form; and
   - interview with the land occupier or landowner and/or other parties where appropriate.

3. Keep a log of dates, times, and facts surrounding your investigation. This should become part of the cost-share contract file. The Cost-Share Program Site Inspection Form, found in this part, should be the central document in the investigation. All subsequent documentation should be attached to this form.

4. Remember that the purpose of the investigation is to verify the facts. Documentation is very important!

5. If the conservation district finds that the investigation has revealed that the land occupier is in compliance with the requirements of the contract and conservation practice plan, you can document this decision and end your work.

6. If the non-compliance issue is not obvious, or if a land occupier or landowner is not cooperative, it is suggested that a more formal determination be made by the conservation district board.

7. The BWSR board conservationist should be consulted for advice when needed.

C.4 Non-compliance determination

After the investigation and gathering of the facts, the conservation district must make a determination whether a land occupier is not in compliance with the state cost-share contract and operation and maintenance plan. If the land occupier is not the landowner, the landowner is also responsible to carry out the operation and maintenance plan as stated on the contract. It is suggested that the conservation district board of supervisors be the decision-maker. Staff should present the information at a formal conservation district board meeting for decision by the board of supervisors.

Notes

If the board determines that the land occupier or landowner is in compliance with the terms of the cost-share contract and the conservation practice plan, then the case is closed. If the conservation district board determines that a non-compliance condition exists, then a Corrective Action Transmittal form, found in this part, must be completed and sent via registered mail to the land occupier (and the landowner if different). Send a copy to the board conservationist. A standard form is provided for the district's use. This form should be used to:

- reference the specific items in the cost-share contract or the referenced conservation practice plan that are not in compliance;
- specify what the land occupier must do to correct the situation; and
- give deadlines for performance.

In cases where damage to the cost-share practice is due to land occupier or landowner failure to implement the operation and maintenance plan, the land occupier or landowner is required to repair or reconstruct the cost-share practice at his or her own cost.

Conservation district staff should solicit land occupier/land owner input when developing a Corrective Action Plan. It is important that the Corrective Action Transmittal not be an absolute mandate because the land occupier or landowner may have knowledge of certain conditions or suggest actions to achieve the desired end results that are somewhat different from what the conservation district has proposed. This provides opportunity for negotiation between the district and the land occupier/ land owner. Deadlines for land occupier/land owner to perform the actions should be reasonable. For example, reseeding of vegetation should be required during the next upcoming recommended seeding period for the cover to be established; removal of unauthorized materials should be accomplished as soon as necessary equipment can access the area, etc. The conservation district should allow up to 30 days for the land occupier/land owner to respond and to negotiate.

If there is any uncertainty on the part of the conservation district board in making the determination, contact your BWSR board conservationist.

Once negotiations are completed, the conservation district should complete the Corrective Action Plan portion of the form (found in this part) with the land occupier/ land owner, if possible, and obtain the land occupier's/land owner's signatures. If a negotiated plan is not arrived at within the 30 day period, the conservation district should complete the Status Verification and Corrective Action Plan (found in this part), sign it and provide it to the land occupier/land owner requesting his or her concurrence and signature and return of the form within 10 working days. If the land occupier/land owner fails to comply with the items identified on the Corrective Action Plan, they will be considered in violation of the terms of the cost-share contract.

C.5 Violations procedure

Occasionally, the conservation district's best efforts to resolve non-compliance issues may not be successful. If the land occupier(s) fails to respond, refuses to sign and/or does not implement the required Corrective Action Plan, the landowner(s) is considered in a “violation” status.

Up to this point, the board conservationist’s role has been to advise the conservation district. If the noncompliant situation is not resolved, the board conservationist becomes directly involved to assist the conservation district in resolving the violation. The district should review the file materials with the board conservationist and accompany him or her on a site visit to view the conservation practice in violation status. The land occupier/land owner should be invited to accompany them on the site.

After the on-site visit, the board conservationist will decide to either uphold the conservation district’s Corrective Action Plan or recommend different requirements on the Corrective Action Plan. The board conservationist will coordinate any recommendations changing the conservation district’s Corrective Action Plan with the district technical representative. The board conservationist will then communicate the required follow-up action to be taken by the land occupier/land owner in writing via registered mail.

If by this time the violation has not been successfully resolved, the violation is referred to the BWSR Grants Coordinator.

Notes

PRACTICE SITE INSPECTION FORM

The site inspection form on the following page is used to document the conservation districts site inspection(s) of conservation practice(s) and should be inserted in the applicant's file. When the conservation district technical representative has determined that the land occupier/land owner has satisfactorily operated and maintained the conservation practice for the specified minimum effective life, they should sign and date the form. Instructions on the completion of this form:

Applicant, General Information, and Practice Location - Reference the contract.

Date - Date of the practice inspection.

Initial - Initials of the conservation district technical representative the performed the inspection.

Conservation Practice Condition - Check the condition of the practice.

Suggested Maintenance - Document the required maintenance (NA if not applicable). Attach additional sheets if necessary.

STATE COST-SHARE PROGRAM
SITE INSPECTION FORM

GENERAL INFORMATION

District	Contract Number	Conservation Practice Category	Eligible Conservation Practice(s)

LAND OCCUPIER

Land Occupier	Address	City/State	Zip Code

CONSERVATION PRACTICE LOCATION

Township Name	Township	Range	Section	1/4,1/4 Section	County Number	Minor Watershed Number

INSPECTION INFORMATION

PRACTICE INSTALLED DATE

Date	CDTR Initials	* Practice Condition	* Contributing Watershed Upland Treatment Condition	Suggested Maintenance

* Attach additional sheets if necessary.

* PRACTICE CONDITIONS
* CONTRIBUTING WATERSHED
UPLAND TREATMENT CONDITIONS — DEFINITION

UPLAND TREATMENT CONDITIONS	DEFINITION
N/E -	Has not yet been established as planned.
Excellent -	Is fully established as planned and is in excellent condition.
Good -	Is fully established as planned and is in adequate condition.
Fair -	Action is required to improve and/or provide maintenance.
Poor -	Needs immediate land occupier action to comply with the terms of the O&M plan.
PNT -	Practice no longer there.

NOTE: Practice site inspections must be completed at the end of the first, fifth, and ninth years following the certified completion of the practice. See Part VI: Contract Maintenance—Practice Site Inspections of the Cost-Share Program Manual for more details.

Notes:

The operation and maintenance plan for this practice has been satisfactorily completed for its designed expectancy.

CONTRACT ID #_____

CORRECTIVE ACTION TRANSMITTAL – STATE COST SHARE PROGRAM

SWCD: _____

Land Occupier Name: _____

Address: _____

DESCRIPTION OF NON-COMPLIANCE ***(to be completed by the conservation district)*****:**

CORRECTIVE ACTIONS REQUIRED:

Item	**Deadline**

Approved by SWCD: ___________________________ _____
(Chairman's Signature) **(Date)**

Note: Attach a copy of the State Cost-Share Program Site Inspection form that identifies the problem.

LAND OCCUPIER RESPONSE:

I, _____, (*print name*) have read the *Corrective Actions Required* listed above and forward my statement for consideration by the district in the resolution of this matter.

_____________________________________ _______________________
(Land occupier signature) (Date)

_____________________________________ _______________________
(Land owner signature, if different from land occupier) (Date)

This form must be signed and returned to the Soil and Water Conservation District office within 30 days after signature by the district for land occupier input to be considered.

CONTRACT ID #______

CORRECTIVE ACTION PLAN – STATE COST-SHARE PROGRAM

--STATUS VERIFICATION --

☐ **LAND OCCUPIER IS NOW IN COMPLIANCE** (*check here to certify that the non-compliance or violation has been resolved).*

☐ **LAND OCCUPIER IS NOT IN COMPLIANCE** (*see Corrective Action Transmittal).*

☐ **LAND OCCUPIER DID NOT RESPOND** within 30 days of his/her receipt of *Corrective Action Transmittal*

____ _________________________
District Technical Representative **Date**

Corrective Actions Required:

Item	**Deadline**

We, the undersigned, do hereby agree that implementation of this Corrective Action Plan will resolve the contract violation.

____ ____________________
TAA District Technical Representative **Date**

____ ____________________
Applicant Signature **Date**

____ ____________________
Land Owner Signature **Date**

LANDOWNER: You must sign this form in the space above and return it to the SWCD within 21 working days of the SWCD signature. Failure to agree to the *Corrective Action Plan* will place you in a violation status, subject to possible legal action.

--CERTIFICATION OF APPLICANT REFUSAL TO COOPERATE –

(To be completed by the SWCD if the applicant does not agree to the corrective action plan or does not implement its provisions)

On behalf of the _____ Soil and Water Conservation District, I hereby declare that the *Corrective Action Plan* described herein has been sent via United States Postal Service Registered Mail to the applicant and that the applicant refuses to acknowledge and/or implement the corrective actions within the required timelines.

____ ____________________
SWCD Chair Signature **Date**

Part VII: Other Programs

Notes

Other funds received by BWSR may be allocated to conservation districts for the treatment of erosion, sedimentation, or water quality problems. These funds may be incorporated with existing cost-share program funds and their use may be governed by the administrative guidelines or may be subject to other administrative guidelines required to fully implement the intent for which these additional funds were appropriated.

FEEDLOT WATER QUALITY MANAGEMENT PROGRAM

In 1998, the Minnesota Legislature appropriated funds for a program that would protect water quality by improving animal waste management systems on feedlots. This program is administered under the State Cost-Share Program rules.

These grant funds are available to the Soil and Water Conservations Districts for small feedlots (less than 500 animal units) to benefit water quality. This program does not allow funding for new or expansion projects. In addition, the Soil and Water Conservation District may request up to 10 percent of the eligible requested project funds to be used towards their technical and administrative costs.

The maximum cost-share rate available is 75 percent of the total eligible cost of the project up to $50,000.

The funding priorities established by the BWSR board (as of April 2004) are:

- Feedlots in riparian locations enrolled in a recognized stewardship plan and high FLEVAL pollution potential.
- Feedlots in riparian locations and high FLEVAL pollution potential.
- Feedlot operations where a high FLEVAL indicates a greater pollution potential.
- Practices that will be applied in current fiscal year for the grant.
- Feedlot operators who have received a notice of violation.
- Feedlots in counties that are conducting or have completed a level 2 or level 3 feedlot inventory.

BWSR will announce to districts when these funds may be applied for and any application criteria.