



# Erosion Control and Water Management Program Policy

(commonly known as the State Cost Share Program)

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## 1.0 Purpose

The Erosion Control and Water Management Program, commonly known as the State Cost Share Program, was created through Minnesota Statutes, §103C.501 to provide funds to Soil and Water Conservation Districts (Districts) to share the cost, with the land occupier, of conservation practices for erosion control, sedimentation control, or water quality improvements that are designed to protect and improve soil and water resources. The purpose of this policy is to provide clear expectations for the implementation of funds appropriated to BWSR associated with the Erosion Control and Water Management Program.

District boards and staff are responsible for the administration and decisions concerning the local use of these funds in accordance with: Minnesota Statutes, chapter 103C.501; Minnesota Administrative Rules, chapter 8400; BWSR policies; and all other applicable laws. BWSR will use grant agreements as contracts for assurance of deliverables and compliance. Willful disregard of relevant statutes, rules, and policies may lead to imposition of financial penalties on the grant recipient.

Funds are allocated by BWSR based on the following minimum criteria to districts that have fully complied with all program rules and policies:

- Extent of high priority erosion or water quality problems in the district, as indicated in the district comprehensive and annual plans or their equivalent.
- Priorities for the control of soil erosion or water quality problems as established by BWSR.
- Historic success of the district in applying conservation practices.

- Ability of the district to expend the funds in a timely manner.
- Legislative appropriation.

BWSR will allocate at least 70 percent of the cost-sharing funds available to districts in the form of grants for conservation practices addressing high priority erosion, sedimentation, or water quality problems. The remaining cost-share funds may be allocated by the board to districts for conservation practices for lower priority erosion, sedimentation, or water quality problems and for technical and administrative assistance or to carry out special projects or programs, except not more than 20 percent of the total funds may be allocated for technical and administrative services. The limitation on the use of cost-sharing funds for administration and administrative services may be modified as provided in 3.1 of this policy.

## 2.0 Eligible Activities

The primary purpose of activities funded with Erosion Control and Water Management funds is to assist with structural or vegetative practices to correct existing problems. Specific preventative practices may also be allowed through policy or appropriation.

**2.1 Practice Standards.** All practices must be consistent with the NRCS Field Office Technical Guide (FOTG) or professionally accepted engineering or ecological practices. Design standards for all practices must include specifications for operation and maintenance for the life of the given practice, including an inspection schedule and procedure. Practices where runoff or sediment from the contributing watershed prevents the practice from achieving the intended purpose with normal operation and maintenance are ineligible. Vegetative practices must follow the BWSR Native Vegetation Guidelines.

**2.2 Effective Life.** All practices must be designed and maintained for a minimum effective life of ten years. The beginning date for a practice's effective life is the same date final payment is approved and the project is considered complete.

**2.3 Repair of Damaged Practices.** Repair of damage to a conservation practice is eligible if the practice was installed using approved standards, damage was caused by reasons beyond the control of the land occupier, and damage or failure of the practice was not due to improper maintenance or removal of the practice within the effective life.

**2.4 Ineligible Practices.** Incentive payments for ongoing maintenance, writing of conservation plans, payments to adopt land management practices such as tillage or residue management, payments to cover crop damage during construction, payments to repair or install septic systems, payments for easements, and/or feedlot expansions are ***not allowable practices with these funds.***

## 3.0 Technical and Administrative Components

Erosion Control and Water Management funds may be used for technical and administrative expenses.

**3.1 Technical and Administrative (TA) Expense.** The BWSR Board has established the maximum amount allowed for TA expenses to be twenty percent (20%) of the total grant as provided in 1.0 of this policy. Remaining funds must be provided as cost share to achieve the purpose of these funds, unless otherwise indicated in specific appropriation language. Districts may use up to 100% of the grant for TA if a request for such use is approved by the Board Conservationist based on a) or b) below:

- a) federal funds will be leveraged and the district couldn't do the project otherwise, or
- b) funds are used on a project that is State Cost Share Program or EQIP eligible and the district's most recent Financial Report indicates less than an 18-month fund balance .

**3.2 TA Activities.** Activities eligible for TA include the following: grant administration, staff training to maintain appropriate technical approval authorities or licenses, site investigations and assessments, design and cost estimates, construction supervision, and inspections.

## **4.0 Cost Share Rates**

Cost share rates represent the percent of the installation cost of a practice that may be provided to a land occupier for materials and labor necessary to install the practice. The BWSR Board establishes cost share rates through policy and implements these rates through grant agreements with Districts.

**4.1 Maximum Rates.** For the Erosion Control and Water Management Program, the BWSR Board has established the maximum cost share rate to a land occupier for installation of a practice at seventy-five percent (75%) of the installation cost, except for unused well sealing and practices installed for energy conservation and snow protection which are established at fifty percent (50%).

**4.2 Match and In-Kind.** A land occupier may provide the remainder of the installation cost through services, in-kind, or non-state or non-federal funds. The District board shall determine whether charges for in-kind services and materials are practical and reasonable. Standard rates for in-kind services should be identified in the district's cost share program policy.

**4.3 Local Rates.** Prior to receiving any applications from land occupiers, district boards may set different cost share rates up to the maximum identified in BWSR policy. These rates should be identified in the District's cost share program policy.

## **5.0 Technical Expertise**

The District Board and staff have the responsibility to ensure that the designated technical staff have the appropriate technical expertise, skills and training for their assigned role(s). Appropriate technical expertise may include, but is not limited to, the following: conservation partnership Technical Approval Authority, professional licensure, reputable vendor with applicable expertise and liability coverage, or other applicable credentials, training and/or expertise.

**5.1 Staff Skills.** A description of staff skills, training, or credentials; or a description of other means the District will use to insure projects meet the requirements of this policy and are installed and maintained according to the standards and specifications of the practice(s) must be included in the District's cost-share program policy.

**5.2 BWSR Review.** BWSR reserves the right to review the licensure and credentials of all technical staff selected by the District where appropriate.

## **6.0 Expenditure of Funds on Practices and Contracts**

BWSR finds that the District Board of Supervisors has the authority and responsibility to approve expenditure of funds within their own organization.

**6.1 Cost Share Contract.** A contract between the District and land occupier(s) receiving state funds is required to provide a legal standing to insure practices are installed and maintained according to

approved standards and specifications. The required contract can be found on the BWSR website. Land occupier means a person, corporation, or legal entity that holds title to or is in possession of land as an owner, lessee, tenant, or otherwise. If the land occupier is not the landowner, the application must also bear the landowner's signature.

- a) **Contract Modifications.** Modifications to the contract may be made prior to execution and with prior approval from the District legal counsel and BWSR.
- b) **Contract Amendments.** Changes to an executed contract are considered an amendment to the contract and subject to review and approval by the District Board. The required amendment form can be found on the BWSR website. Prior to approving an amendment, technical staff must attest that the amendment has merit. Amendments shall not be considered or approved after the end of the contract or after approval to issue final payment on the original contract has been made. Amendments are limited to changes in practice specifications, installation dates, land occupier information, practice components, or cost share rates and amounts.
- c) **Group Projects.** Where the cooperation of several land occupiers is required for implementation of a project; and the land occupiers have agreed to the project, division of payments for the project, and signed a group project addendum to the cost-share contract; the District may enter into a contract with only the group spokesperson of the contract. A group project addendum form can be found on the BWSR website.
- d) **Projects that Cross a District Boundary.** If a project involves land in more than one District, application for the entire project must be made to the District containing the majority of the project lands.
- e) **Pooling cost-share allocation for joint projects.** District Boards may enter into an agreement to pool portions or all of their collective cost-share allocations to implement joint projects. Cooperative and joint projects may be undertaken to accomplish watershed-based resource management goals or other goals of mutual benefit as identified in the county's comprehensive local water plan or the District's comprehensive plan.

**6.2 Contract Approval.** District Boards must approve or deny the contract. The action taken must be documented in the District Board's meeting minutes. Approval of a contract is considered approval for expenditure of funds.

**6.3** Projects where construction has begun prior to District Boards approval are ineligible for financial assistance.

**6.4 Project Timeframe.** District Boards have the authority to adopt timely starting and completion dates. Entering into a contract with a land occupier must occur within the grant period. Completion dates can be no longer than two years after approval of the District Board. Projects not completed within this timeframe must be cancelled unless prior written approval of the State board has been received.

**6.5 Canceled Projects.** Funds from canceled projects or remaining from completed projects where the final cost was less than the estimated amount may be re-encumbered to a new contract as long as District Board approval occurs prior to the end of the grant period.

**6.6 Removal of Practices.** District Boards may authorize the removal of a practice installed under this program provided the land occupier can show good cause for removal of the practice and the purpose of the original practice has been achieved.

**6.7 Delegation.** District Boards may delegate signing contracts and supporting program documents to District staff. This delegation must be identified in the District's cost share program policy.

**6.8 Recording Practices.** The size, location, and effective life of the soil and water conservation practices that have received cost-share payments under this program equal to or in excess of \$50,000 shall be recorded by the district on the property title. Instructions and forms for recording practices can be found on the BWSR website.

## **7.0 Practice Sign-off and Payment**

Prior to payment, technical staff must attest that the practice was properly installed and completed according to the plans and specifications, including technically-approved modifications, and that vouchers and receipts are accurate. Project costs for the purposes of determining cost share amounts include the materials and labor necessary to complete the project.

**7.1 Reimbursement.** Land occupiers must incur all expenses for project implementation and provide vouchers and invoices or copies of paid receipts to verify all expenses prior to requesting reimbursement. A payment voucher form is available on the BWSR website.

- a) **Partial Payments.** Partial payments are allowed. Prior to authorization for partial payment, technical staff must attest to the District Board that the request for partial payment has merit, the payment request is equal to or less than the percent of construction that is complete, and that the project will still be completed within the contract timeline. Land occupiers not completing partially paid projects shall be considered as violating MN Rule, part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in this part, to return to the district up to one hundred fifty percent (150%) of the amount of financial assistance received. All expenses incurred to correct damage caused by the land occupier's failure to expeditiously complete the project must be borne by the land occupier.
- b) **Service Charges.** District or Technical Service Area charges for services such as administration, field investigations, design, and monitoring to establish the practice shall not be included in calculating the project cost for purposes of determining cost-share payment amounts to the land occupier. Service charges such as tree planting or mechanical weed control are eligible to be included.
- c) **Actual Cost Different Than Estimated Cost.** In cases where the actual cost of the practice exceeds the estimated cost, the district may only share the additional amount when an amendment to the cost share contract has been approved per policy 6.1. Where the actual cost is less than the estimated cost, the district shall only share the approved percentage of the actual cost of the practice.

**7.2 Project Review.** After receiving a request for final reimbursement, technical staff must review for each project; the as-built plan, vouchers, and invoices or copies of paid receipts submitted by the land occupier for completion and technical approval.

**7.3 Combining Funding Sources.** Payment amounts from combined state and federal sources shall not exceed the maximum cost share rate set by the BWSR Board in Section 4.0 of this policy. Calculation of payment amounts does not include incentive payments.

**7.4 Final Plans.** One copy of the final approved plan must be given to the land occupier and one copy retained with the project file located in the district office.

## 8.0 Post-Construction and Follow-Up Activities

Identifying operation and maintenance activities specific to the installed practices is critical to ongoing performance of installed practices as well as to planning and scheduling those activities. Scheduled site inspections by qualified staff are necessary to ensuring operation and maintenance has been taking place.

**8.1 Operation and Maintenance Plan.** Qualified technical staff must prepare an operation and maintenance plan specific to the practice and the site where it is located. The operation and maintenance plan must detail the maintenance activities that are likely to be needed for the practice and contributing watershed, specify how and when to accomplish them, and identify the inspection schedule. The plan should be prepared and reviewed with the land occupier before installation of the conservation practices begins.

**8.2 Inspections.** Qualified technical staff shall ensure that the operation and maintenance plan is being followed and the practices have not been altered or removed by conducting periodic site inspections. Inspections are to:

- a) Verify that all components of the practice remain in place and are in good repair, and/or
- b) Identify repairs necessary in accordance with the operation and maintenance plan; and/or
- c) Identify further assessment or action necessary if necessary repairs are beyond the scope of the operation and maintenance plan (need cross-reference to non-compliance policy).

**8.3 Failure to Maintain Practices.** Should the land occupier fail to maintain the practices during their effective life according to the operation and maintenance plan, the land occupier is liable to the district for up to one hundred fifty percent (150%) of the financial assistance received to install and establish the practice as per MN Rule, part 8400.1700 as determined by the district board. Funds received by a district from a landowner who has failed to maintain a practice, must be used according to this policy and Minnesota Rules 8400.0050 to 8400.1900, less the administrative cost.

## 9.0 District Reporting Requirements

To ensure the continued success of the Erosion Control and Water Management Program, regular reporting of accomplishments and benefits is required. This reporting is accomplished through entries and documentation in eLINK. Guidance for reporting in eLINK is available on the BWSR website.

**9.1 Annual Reporting.** Districts must annually enter information on activities accomplished with the grant funding in eLINK. Reporting is required for grant fund expenditures from the prior calendar year and is to be completed by BWSR established reporting deadlines.

**9.2 Grant Closeout Reporting.** Within thirty (30) calendar days of the conclusion of each grant agreement or expenditure of all grant funds, whichever occurs first, Districts are required to provide the following to BWSR:

- a) Entry of information on all projects completed with the grant funding in eLINK;
- b) Signed Final Financial Report from eLINK;
- c) Documentation of District Board approval of the Final Financial Report; and
- d) Return any unspent or unencumbered funds, if applicable, as instructed on the Returned Check Form, found on the BWSR website.

**9.3 Unencumbered Funds.** Grant funds unencumbered by the District board after the grant period must be returned to the state board within thirty (30) calendar days. Unencumbered funds are

those funds remaining from cancelled projects or completed projects where the final cost was less than the estimated amount.

**9.4 Records Retention.** Project files must be retained by the District pursuant to Minnesota Statutes, §138.17 and consistent with ongoing records retention schedules.

**9.5 Non-compliance with Reporting Requirements.** Any District that does not complete these requirements will not be eligible to receive funds from this program until all past reporting has been completed. Financial penalties on the grant recipient may be applied.

## **10.0 BWSR Program Monitoring, Reconciliation, Verification and Penalty Procedures**

**10.1 Monitoring, Reconciliation, and Verification.** BWSR will annually monitor all Districts reporting for compliance with reporting requirements of the Erosion Control and Water Management Program Policy above and will reconcile and verify all grants according to the current Grants Monitoring, Reconciliation, and Verification policy.

**10.2 Penalties.** Grant penalties can be applied when it has been determined the district is not in compliance with relevant statutes, rules, and state policies. Noncompliance is ranked by the degree of departure from recommended administrative procedures to violations of rules, statutes, or grant agreements. Penalties may include the district requiring a land occupier to return the cost-share funds received, the district repaying the State with non-state funds, and/or the district taking a yearly reduction in cost-share grant payments(s) until the violation amount is satisfied. Minnesota Statutes, §103C.401 establishes BWSR's obligation to assure program compliance.

- a) All state base grants (State Cost Share, Easement Services, and General Services) for which funding is requested may be reduced by five percent if satisfactory comprehensive or annual plans are not received by the annual deadline, with an additional five percent reduction for each month late. No base grant funds will be allocated until a satisfactory plan is received.
- b) If the state becomes aware of cases where a district knowingly participates in accepting fraudulent receipts or invoices to calculate cost-share claims, the state may deny future cost-share funds for the district.

## **11.0 District Cost Share Program Policies**

The following items are recommended to be identified in local cost share program policies, either on a project-by-project or annual basis:

- a) Identify or describe available staff skills, training, credentials, or other means the District will use to insure projects are installed and maintained according to standards and specifications (see policy 5.)
- b) Set District cost share rates to be less than or equal to rates set by the State Board (see policy 4.)
- c) Establish maximum flat rates for in-kind services and materials provided by land occupiers (see policy 4.)
- d) Identify practice standards to be used for design, construction, operation, and maintenance (see policy 2.)

- e) Set criteria for project selection, i.e. priority watershed or location, priority practices, recording practices, consideration of other activities in the area, etc. (see policy 6)
- f) Establish a process and local policy for addressing cost-share contract noncompliance (see policy 6).
- g) Other policies as necessary and applicable to the program.

**For additional guidance see the BWSR Grants Manual at:**

<http://www.bwsr.state.mn.us/grants/manual/index.php#/Purpose%20&%20Scope/7/top>