

Board of Water and Soil Resources**Proposed Permanent Rules Relating to Land and Water Treatment Program****8400.0050 PURPOSE.**

The ~~state cost-share~~ land and water treatment program is administered through ~~local~~ conservation districts to provide financial and technical assistance to land occupiers for the application of conservation practices that reduce erosion, control sedimentation, ~~or~~ improve and protect water quality, or address water quantity problems due to altered hydrology to ensure the sustainable use of Minnesota's natural resources.

EROSION CONTROL AND WATER MANAGEMENT PROGRAM**8400.0060 AUTHORITY.**

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the districts, to administer a program of cost sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0060 to 8400.1900 provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to districts and standards and guidelines that the district boards shall use in allocating funds to land occupiers.

8400.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.0050 to ~~8400.1800~~ 8400.1900, the definitions in this part, in addition to those in Minnesota Statutes, chapter 103C, apply.

Subp. 1a. [Repealed, 20 SR 2185]

Subp. 2. [Repealed, 20 SR 2185]

Subp. 2a. [See repealer.]

Subp. 3. **Annual work plan.** "Annual work plan" means a plan prepared by the ~~conservation~~ district pursuant to Minnesota Statutes, section 103C.331, subdivision 11,

paragraph ~~(f)~~ (e), and according to the most recent version of the ~~Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans~~ policy published by the state board. ~~That publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.~~

Subp. 4. [See repealer.]

[For text of subps 5 to 7a, see M.R.]

Subp. 8. **Comprehensive plan.** "Comprehensive plan" means a long-range plan adopted by the ~~conservation~~ district pursuant to Minnesota Statutes, section 103C.331, subdivision 11, and according to the most recent version of the ~~Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans~~ policy published by the state board. ~~That publication is not subject to frequent change, is available in the State Law Library, and is incorporated by reference.~~

Subp. 8a. [Repealed, 20 SR 2185]

Subp. 9. **Conservation District.** "~~Conservation~~ District" means a soil and water conservation district organized under Minnesota Statutes, chapter 103C.

Subp. 10. **Conservation District board.** "~~Conservation~~ District board" means the board of supervisors of a soil and water conservation district as organized under Minnesota Statutes, chapter 103C.

Subp. 10a. [See repealer.]

[For text of subps 10b to 14a, see M.R.]

Subp. 14b. [See repealer.]

Subp. 15. [See repealer.]

Subp. 16. [See repealer.]

Subp. 16a. [See repealer.]

3.1 Subp. 16b. [See repealer.]

3.2 Subp. 17. [Repealed, 9 SR 2439]

3.3 Subp. 18. **Land occupier.** "Land occupier" means a person, corporation, or legal
3.4 entity that holds title to or is in possession of land within a ~~conservation~~ district as an
3.5 owner, lessee, tenant, or otherwise.

3.6 Subp. 18a. [See repealer.]

3.7 Subp. 18b. [See repealer.]

3.8 Subp. 19. [Repealed, 20 SR 2185]

3.9 Subp. 19a. [See repealer.]

3.10 Subp. 20. [Repealed, 20 SR 2185]

3.11 Subp. 20a. [See repealer.]

3.12 Subp. 20b. [See repealer.]

3.13 Subp. 20c. [Repealed, 20 SR 2185]

3.14 Subp. 20d. [See repealer.]

3.15 Subp. 21. [Repealed, 20 SR 2185]

3.16 Subp. 22. [Repealed, 20 SR 2185]

3.17 Subp. 22a. [See repealer.]

3.18 [For text of subps 23 and 24, see M.R.]

3.19 Subp. 25. [See repealer.]

3.20 Subp. 26. [See repealer.]

3.21 Subp. 27. [See repealer.]

3.22 **8400.0250 PROGRAM POLICY.**

4.1 The state board shall adopt policies providing for administration and implementation
4.2 of parts 8400.0500 to 8400.1900.

4.3 **8400.0300 APPROVED CONSERVATION PRACTICES.**

4.4 Subpart 1. [See repealer.]

4.5 Subp. 2. **Criteria for approved conservation practices.** Practices ~~approved by the~~
4.6 ~~state board~~ eligible for cost-share funds must meet the criteria in items A to D.

4.7 A. ~~The primary purpose of all practices must be the control of soil erosion,~~
4.8 ~~sedimentation, or chemical or nutrient runoff or infiltration that impairs water quality.~~
4.9 ~~Farmstead windbreaks are exempt from this requirement.~~ The objectives of the approved
4.10 conservation practices may include, but are not limited to, activities that:

4.11 (1) control nutrient runoff;

4.12 (2) control sedimentation;

4.13 (3) divert runoff to protect and improve water quality;

4.14 (4) reduce wind erosion;

4.15 (5) control gully, rill, or sheet erosion;

4.16 (6) protect shoreland from erosion;

4.17 (7) control storm water runoff;

4.18 (8) protect or improve surface water and groundwater quality;

4.19 (9) provide energy conservation and snow protection; or

4.20 (10) alleviate water quantity problems due to altered hydrology.

4.21 B. ~~All practices cost-shared under this program must be designed and~~
4.22 ~~maintained for a minimum effective life of ten years. The beginning date for a practice's~~
4.23 ~~effective life is the same date the conservation district board approves the final payment~~

~~and the project is considered complete.~~ Practices to restore, protect, or enhance natural wildlife, aquatic, or native plant habitat are eligible when used in combination with the practices listed in item A.

C. No cost-share funds shall be furnished for conservation practices designed ~~only~~ primarily to increase land productivity.

D. All conservation practices must be consistent with the district's comprehensive plan.

Subp. 3. [See repealer.]

8400.0500 MAXIMUM COST-SHARE RATES.

The maximum cost-share rates established by the state board represent the maximum percent or amount of the total cost of a conservation practice that may be funded ~~by using~~ state cost-share funds. ~~Where state and federal funds are cost-shared on the same project, their combined amount shall not exceed the maximum cost-share rate.~~

8400.0550 RECORDING CONSERVATION PRACTICES.

The state board may determine that long-term maintenance of a conservation practice is desirable and may require that maintenance be made a covenant upon the land for the effective life of the practice. A covenant under this part shall be construed in the same manner as a conservation restriction under Minnesota Statutes, section 84.65.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO ~~CONSERVATION~~ DISTRICTS.

Subpart 1. [See repealer.]

Subp. 2. [Repealed, 9 SR 2439]

Subp. 3. [See repealer.]

6.1 Subp. 4. **Grants to ~~conservation~~ districts.** The state board ~~shall annually~~ may
6.2 allocate cost-share funds to ~~conservation~~ district boards that have fully complied with
6.3 Minnesota Statutes, section 103C.501, subdivision 3; all state cost-share erosion control
6.4 and water management program rules and comprehensive and annual planning guidelines
6.5 as prescribed by the state board; and program policies. At least 70 percent of the
6.6 cost-sharing funds available statewide will be allocated to ~~conservation~~ districts in the
6.7 form of grants for conservation practices addressing high priority erosion, sedimentation,
6.8 or water quality problems. The remaining cost-share funds may be allocated by the
6.9 board to ~~conservation~~ districts for conservation practices for lower priority erosion,
6.10 sedimentation, or water quality problems and for technical and administrative assistance
6.11 or to carry out special projects or programs, except not more than 20 percent of the total
6.12 funds may be allocated for technical and administrative services.

6.13 Subp. 5. **Other ~~state and federal~~ funds.** Other funds received by the state board
6.14 may be allocated to ~~conservation~~ districts for the treatment of erosion, sedimentation, ~~or~~
6.15 water quality problems, or water quantity problems due to altered hydrology. These
6.16 additional funds may be incorporated with existing ~~cost-share~~ erosion control and water
6.17 management program funds and their use may be governed by the ~~Administrative~~
6.18 Guidelines program policy or may be subject to other administrative policies or guidelines
6.19 required to fully implement the intent for which these additional funds were appropriated.

6.20 **8400.0900 ~~CONSERVATION~~ DISTRICT ADMINISTRATION OF PROGRAM**
6.21 **FUNDS.**

6.22 Subpart 1. **General.** Following receipt of grant funds from the state board, a
6.23 ~~conservation~~ district is responsible for administration of the funds in accordance with
6.24 Minnesota Statutes, chapter 103C, ~~the Administrative Guidelines, and all other applicable~~
6.25 ~~laws. The conservation district board shall make all decisions concerning use of these~~
6.26 ~~funds in accordance with parts 8400.0050 to 8400.1800 and the Administrative Guidelines~~

7.1 8400.1900, program policies, and all other applicable laws. All funds allocated to
7.2 ~~conservation~~ districts must be used for the purposes designated by the state board.

7.3 Subp. 2. **Maximum cost-share percentage rate.** Prior to considering any
7.4 applications from land occupiers for cost-share assistance, the ~~conservation~~ district board
7.5 shall establish cost-share rates for conservation practices to be installed under the program,
7.6 up to the maximum rates established by the state board. ~~The maximum percent of the total~~
7.7 ~~eligible cost of the practices installed using state cost-share funds must not exceed 75~~
7.8 ~~percent. Other state or federal funds from any source, when used in combination with~~
7.9 ~~cost-share funds of this program, must not exceed the maximum payment rate of 75~~
7.10 ~~percent of the total eligible costs. The conservation district board shall establish cost-share~~
7.11 ~~rates based on the following factors:~~

7.12 ~~A: the extent of high priority erosion or water quality problems in the~~
7.13 ~~conservation district as outlined in the conservation district's comprehensive and annual~~
7.14 ~~plans;~~

7.15 ~~B: advice of technical experts familiar with the conservation district;~~

7.16 ~~C: cost-share rates currently in effect under the agricultural conservation~~
7.17 ~~program administered by the United States Farm Service Agency and other assistance~~
7.18 ~~programs;~~

7.19 ~~D: conservation district priorities as established in the conservation district's~~
7.20 ~~comprehensive and annual plans and comprehensive local water plan;~~

7.21 ~~E: cost-share funds available; and~~

7.22 ~~F: the state board's Administrative Guidelines.~~

7.23 ~~The maximum cost-share rates must be identified in the conservation district's annual~~
7.24 ~~plan and other documents containing the policies of the conservation district.~~

7.25 Subp. 3. [See repealer.]

8.1 Subp. 4. Criteria for district board review. The district board shall use the
8.2 factors in items A to D to determine practice eligibility and to review applications for
8.3 conservation practice funding.

8.4 A. The application must be signed by the land occupier and the landowner,
8.5 if different, indicating their agreement to:

8.6 (1) grant the district's representatives access to the parcel where the
8.7 conservation practice will be located;

8.8 (2) obtain all permits required in conjunction with the installation and
8.9 establishment of the practice prior to starting construction of the practice; and

8.10 (3) be responsible for operation and maintenance of conservation practices
8.11 applied under this program according to an operation and maintenance plan prepared or
8.12 approved by a district technical representative or the district's delegate.

8.13 B. Costs to repair damage to conservation practices installed with state
8.14 cost-share dollars are eligible if the damage was caused by reasons beyond the control of
8.15 the land occupier.

8.16 C. If the practice has fully met or exceeded its designed effective life, the cost
8.17 to reconstruct the practice is eligible for cost-share assistance.

8.18 D. Conservation practices where construction has begun prior to district
8.19 approval are ineligible for financial assistance. The board may waive this requirement for
8.20 emergency needs.

8.21 Subp. 5. Entering into contract. After completion of the district board's, or its
8.22 delegate's, review of practice eligibility, the district board, or its delegate, shall approve or
8.23 deny the application. If the application is approved, the district board, or its delegate, may
8.24 enter into a contract with the land occupier.

8.25 **8400.1650 RECORDING CONSERVATION PRACTICES.**

9.1 ~~The size, location, and effective life of the soil and water conservation practices that~~
9.2 ~~have received cost-share payments under this program equal to or in excess of \$50,000~~
9.3 ~~shall be recorded by the conservation district on the property title. The conservation~~
9.4 ~~district board may require the recording of practices where cost-share payments are less~~
9.5 ~~than \$50,000 where such action is considered appropriate by the conservation district~~
9.6 ~~board. Recording procedures, including the prescribed forms, are described in the~~
9.7 ~~administrative guidelines for the state cost-share program. When a district board, or its~~
9.8 delegate, determines that long-term maintenance of a conservation practice is desirable, the
9.9 board, or its delegate, may require that maintenance be made a covenant upon the land for
9.10 the effective life of the conservation practice. A covenant under this part shall be construed
9.11 in the same manner as a conservation restriction under Minnesota Statutes, section 84.65.

9.12 **8400.1700 MAINTENANCE.**

9.13 Subpart 1. **Land occupier maintenance responsibilities.** The land occupier is
9.14 responsible for operation and maintenance of conservation practices applied under
9.15 this program to ensure that their conservation objective is met and the effective life;
9.16 ~~a minimum of ten years~~, is achieved. Should the land occupier fail to maintain the
9.17 conservation practices during their effective life, the land occupier is liable to the state of
9.18 Minnesota for ~~the full amount~~ up to 150 percent of financial assistance received to install
9.19 and establish the conservation practice. The land occupier is not liable for cost-share
9.20 assistance received if the failure was caused by reasons beyond the land occupier's control,
9.21 or if ~~soil and water~~ conservation practices are applied at the land occupier's expense which
9.22 provide equivalent protection of the soil and water resources.

9.23 Subp. 2. **Reapplication ~~or removal~~ of conservation practices.** In no case shall a
9.24 ~~conservation~~ district provide cost-share assistance to a land occupier for the reapplication
9.25 of conservation practices which were removed by the land occupier during their effective
9.26 life or that failed due to improper maintenance. ~~The conservation district board may~~

10.1 ~~authorize the removal of a practice installed under this program provided the land occupier~~
10.2 ~~can show good cause for removal of the practice and the purpose of the original practice~~
10.3 ~~has been achieved.~~

10.4 **8400.1750 PRACTICE SITE INSPECTIONS.**

10.5 ~~As a condition to receive grant funds from the state board, the conservation district~~
10.6 ~~shall ensure compliance with the maintenance provisions of part 8400.1700 and Minnesota~~
10.7 ~~Statutes, chapter 103C, by monitoring all cost-share contracts made with land occupiers.~~
10.8 ~~The conservation districts~~ district or the district's delegate shall conduct site inspections of
10.9 conservation practices installed with cost-share funds to determine if the land occupier is
10.10 in compliance with the operation and maintenance requirements under part 8400.1700 and
10.11 the policy, guidelines, and requirements of the state board. ~~Site inspection procedures,~~
10.12 ~~including the prescribed forms and frequency, are described in the Administrative~~
10.13 ~~Guidelines for the State Cost-Share Program.~~

10.14 **8400.1800 APPEALS.**

10.15 Land occupiers may appeal a ~~conservation~~ district's action within 60 days of receiving
10.16 notice of the action by submitting a written request to the ~~conservation~~ district board
10.17 asking the board to reconsider its decision. Should the land occupier and the ~~conservation~~
10.18 district board reach an impasse, the land occupier may petition to appeal the conservation
10.19 district board's decision to the state board within 60 days of receiving notice of the
10.20 district board's final decision. ~~If an informal hearing is granted, the state board or its~~
10.21 ~~appointed mediator shall hear all testimony offered, and shall accept written testimony~~
10.22 ~~for ten days after the hearing. The mediator, if one is used, shall report the findings and~~
10.23 ~~recommendation to the state board.~~ The state board or its executive director shall review
10.24 and grant the petition, unless it is deemed without sufficient merit, within 30 days of the
10.25 receipt of the petition. The state board shall make its decision on the appeal, if granted,
10.26 within 60 days of the ~~a~~ hearing date ~~or 60 days after receiving the mediator's report,~~

11.1 ~~upholding, reversing, or amending.~~ The state board's decision may uphold, reverse, or
11.2 amend the decision of the ~~conservation~~ district board.

11.3 **8400.1900 REPORTS TO STATE BOARD.**

11.4 ~~Each district shall submit to the state board the reports identified in part 8400.0700.~~
11.5 For the purpose of reporting and monitoring the progress of the program and use of funds,
11.6 each district shall submit an accomplishments report according to the guidelines and
11.7 requirements established by the state board.

11.8 **EASEMENT PROGRAM**

11.9 **8400.3000 AUTHORITY.**

11.10 Minnesota Statutes, sections 84.95, 103A.209, and 103F.501 to 103F.531, authorize
11.11 the state board, in consultation with districts, private groups, and state and federal
11.12 agencies, to implement a program to (a) acquire ~~permanent~~ easements on land ~~containing~~
11.13 ~~type 1, 2, 3, or 6 wetlands;~~ (b) to retire certain marginal agricultural land from agricultural
11.14 ~~crop production or pasturing~~ and protect environmentally sensitive areas to enhance soil
11.15 and water quality, minimize damage to flood-prone areas, sequester carbon, and support
11.16 native plant, fish, and wildlife habitats and to reestablish perennial cover and restore
11.17 wetlands on that land; and (c) ~~to enhance and protect other private lands.~~ Parts 8400.3000
11.18 to 8400.3930 provide procedures and criteria to be followed by the state board and district
11.19 boards in implementing Minnesota Statutes, sections 103F.501 to 103F.531. The state
11.20 board shall implement the reinvest in Minnesota reserve program with district boards when
11.21 practical, but may also implement the program directly or through its authorized agents.

11.22 **8400.3030 DEFINITIONS.**

11.23 [For text of subps 1 to 5, see M.R.]

11.24 Subp. 6. [See repealer.]

11.25 Subp. 6a. [See repealer.]

12.1 [For text of subps 7 to 10, see M.R.]

12.2 Subp. 10a. [See repealer.]

12.3 [For text of subps 10b to 13, see M.R.]

12.4 Subp. 14. **District.** "District" means a ~~local~~ soil and water conservation district
12.5 organized under Minnesota Statutes, chapter 103C.

12.6 Subp. 15. **District board.** "District board" means the board of supervisors of a soil
12.7 and water conservation district organized under Minnesota Statutes, chapter 103C.

12.8 [For text of subps 16 and 17, see M.R.]

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

12.14 Subp. 17b. **Easement program practice specifications.** "Easement program
12.15 practice specifications" means the detailed descriptions of the approved practices that are
12.16 allowed on lands enrolled in the conservation easement programs. ~~This information is~~
12.17 ~~contained in the current edition of the conservation easement handbook, a publication of~~
12.18 ~~the state board that is defined in subpart 10a.~~

12.19 Subp. 18. [Repealed, 19 SR 550]

12.20 Subp. 19. [See repealer.]

12.21 Subp. 20. [See repealer.]

12.22 Subp. 20a. [See repealer.]

12.23 [For text of subps 20b to 23, see M.R.]

12.24 Subp. 24. [See repealer.]

13.1 Subp. 25. [See repealer.]

13.2 Subp. 26. [See repealer.]

13.3 [For text of subp 27, see M.R.]

13.4 Subp. 28. [See repealer.]

13.5 [For text of subps 29 and 30, see M.R.]

13.6 Subp. 31. **Landowner.** "Landowner" means an individual, ~~family farm, family~~
13.7 ~~farm partnership, authorized farm partnership, family farm corporation, authorized farm~~
13.8 ~~corporation, estate, or testamentary trust, or entity that is not prohibited from owning~~
13.9 agricultural land under Minnesota Statutes, section 500.24, and who either owns eligible
13.10 land or is purchasing eligible land under a contract for deed in Minnesota.

13.11 [For text of subp 31a, see M.R.]

13.12 Subp. 32. [See repealer.]

13.13 Subp. 33. **Marginal agricultural land.** "Marginal agricultural land" ~~for the RIM~~
13.14 ~~reserve program~~ means agricultural land that is: ~~(1)~~

13.15 A. composed of class IIIe, IVe, V, VI, VII, or VIII land as identified in the land
13.16 capability classification system of the United States Department of Agriculture; or ~~(2)~~

13.17 B. similar to land described under ~~clause (1)~~ item A and identified under a
13.18 land classification system selected by the state board ~~that is composed of soils that are~~
13.19 ~~inherently unproductive, as defined in subpart 28, for agricultural crop production or likely~~
13.20 ~~to cause significant potential environmental impact, as defined in subpart 44.~~

13.21 ~~If the state selects a land classification system as provided by clause (2), the state~~
13.22 ~~board will provide districts with a list of soil mapping units indicative of marginal~~
13.23 ~~agricultural land. Districts, upon state board approval, may change the list as necessary to~~
13.24 ~~reflect local soil characteristics. A current list is available at the state board office and at~~
13.25 ~~district offices, is subject to periodic change, and is incorporated herein by reference.~~

14.1 [For text of subps 33a to 39b, see M.R.]

14.2 Subp. 39c. [See repealer.]

14.3 Subp. 40. [See repealer.]

14.4 Subp. 41. [Repealed, 19 SR 550]

14.5 Subp. 42. **RIM reserve program.** "RIM reserve program" means the program
14.6 established in Minnesota Statutes, ~~sections~~ section 103F.515 and 103F.525.

14.7 Subp. 42a. **Riparian land.** "Riparian land" means land adjacent to public waters,
14.8 drainage systems, wetlands, or locally designated priority waters ~~identified in a~~
14.9 ~~comprehensive local water plan, as defined in Minnesota Statutes, section 103B.3363,~~
14.10 ~~subdivision 3.~~

14.11 [For text of subps 43 and 43a, see M.R.]

14.12 Subp. 44. [See repealer.]

14.13 Subp. 45. **Soil and water conservation practice.** "Soil and water conservation
14.14 practice" means structural or vegetative practices applied to land for the purposes of
14.15 controlling soil erosion, sediment, agricultural nutrients or waste, or other water pollutants.

14.16 Subp. 46. [See repealer.]

14.17 Subp. 47. [Repealed, 14 SR 1928]

14.18 Subp. 47a. **State board.** "State board" means the Board of Water and Soil Resources.

14.19 Subp. 48. **Wetland.** "Wetland" means ~~land that has a predominance of hydric soils~~
14.20 ~~and that is inundated or saturated by surface or groundwater at a frequency and duration~~
14.21 ~~sufficient to support, or that periodically does support, a predominance of hydrophytic~~
14.22 ~~vegetation~~ wetlands as defined in Minnesota Statutes, section 103G.005, subdivision 19.

14.23 **8400.3300 CRITERIA FOR SCREENING COMMITTEE REVIEW OF**
14.24 **APPLICATIONS.**

15.1 ~~Upon completion of the application period and initial eligibility determination by the~~
15.2 ~~responsible district staff or the district technical representative, the screening committee~~
15.3 ~~may confer and prioritize each eligible application. The state board may direct districts~~
15.4 ~~to utilize a local screening process or committee to prioritize local project areas or~~
15.5 ~~applications.~~ The criteria for screening committee prioritization are as follows:

15.6 A. consistency with the purpose and policy of the respective conservation
15.7 easement program ~~for which an application has been submitted by an eligible landowner;~~

15.8 ~~B. the parcel's relationship to the priorities previously determined in part~~
15.9 ~~8400.3130;~~

15.10 ~~E~~ B. the parcel's potential impact on reducing soil erosion and sedimentation,
15.11 improving water quality, reducing flooding, and enhancing fish and wildlife habitat;

15.12 ~~D. potential title problems and encumbrances;~~

15.13 ~~E~~ C. compatibility with established priorities of the organizations and agencies
15.14 ~~represented on participating in the screening committee process;~~ and

15.15 ~~F~~ D. highest priority must be given to permanent easements pursuant to
15.16 Minnesota Statutes, section 103F.515, subdivision 2, paragraph ~~(f)~~ (e).

15.17 **8400.3610 ALTERATION, RELEASE, OR TERMINATION OF CONSERVATION**
15.18 **EASEMENTS.**

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

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

16.1 [For text of items A and B, see M.R.]

16.2 C. a letter from the Department of Natural Resources ~~area wildlife manager~~
16.3 recommending either approval or disapproval of the proposed change; and

16.4 D. other supporting documents, including:

16.5 (1) an aerial photo identifying the requested change;

16.6 (2) a soil survey map of the area;

16.7 (3) cropping history information; and

16.8 (4) other pertinent documentation that will support the request.

16.9 The state board reserves the right to require special provisions to ensure at least
16.10 equal resource value as a condition of approving the request. The state board must be
16.11 compensated by the landowner for all damages and loss of benefits to the conservation
16.12 easement and the state board may also require reimbursement for administrative expenses
16.13 and costs incurred in the alteration, release, or termination of a conservation easement.

16.14 **8400.3630 APPROVED PRACTICES.**

16.15 Subpart 1. **Criteria.** Approved practices must have as their primary purpose the
16.16 control of soil erosion or sedimentation, protection or improvement of water quality,
16.17 reduction of flooding, or enhancement of fish and wildlife habitat. Approved practices
16.18 ~~are~~ may be further specified in the easement program policies or practice specifications.
16.19 Practices that do not qualify as approved practices include, but are not limited to, Christmas
16.20 tree plantations and fruit orchards. Food plots are not eligible for conservation easement
16.21 program cost-sharing, but are considered an approved practice and, therefore, are allowed
16.22 on enrolled acres ~~if they are included~~ as specified in the easement conservation plan.

16.23 Subp. 2. **Establishment of approved practices.** A landowner is responsible for
16.24 the establishment of all approved practices on the easement area in accordance with the
16.25 easement program practice specifications. Establishment of approved practices must be

monitored by the district board or its delegate to ensure compliance with the conservation plan and the conservation easement. Upon establishment or partial completion of an approved practice, a district technical representative shall certify whether or not the approved practice, in whole or part, has been satisfactorily performed.

8400.3700 COST-SHARED PRACTICES.

Subpart 1. **Approved practices eligible for cost-sharing.** The state board shall determine which approved practices are eligible for conservation easement program cost-sharing, consistent with the criteria as described in part 8400.3630, subpart 1, ~~and consistent with the payment limits in Minnesota Statutes, section 103F.515, subdivision 6, paragraph (a), clauses (1) and (2).~~

Subp. 2. **Eligible costs for cost-shared practices.**

A. Upon satisfactory performance under part 8400.3630, subpart 2, the landowner shall present receipts or invoices to the district board, or its delegate, of the costs incurred in the installation of the cost-shared practice. The district board shall review the receipts or invoices to determine the costs eligible for conservation easement program payment. If the district board determines that the costs requested for reimbursement are reasonable and necessary, it shall recommend payment to the landowner by submitting certification of satisfactory performance and providing documentation of reimbursable practice costs to the state board on forms provided by the state board. If the district board determines that certain costs requested for reimbursement are not eligible or reasonable, it shall notify the landowner in writing of this determination. The landowner may request reconsideration of this determination by the district board within 30 days of receipt of the determination. If additional costs are determined to be eligible and reasonable, the district board shall then recommend payment for the approved amount. The state board reserves the right to approve whether costs requested for reimbursement are eligible and reasonable.

18.1 B. Eligible costs for approved practices are limited to those prescribed by the
18.2 state board as allowed in Minnesota Statutes, section 103F.515, subdivision 6, paragraph
18.3 (a), clauses (1) and (2), and to the total state funds encumbered for the cost-shared
18.4 practices designated in the conservation plan. The amount of encumbered funds may be
18.5 increased, within the statutory limits, after a landowner request, which has been properly
18.6 executed on forms prescribed by the state board, has been approved by the state board.

18.7 C. ~~If the actual cost of installing a cost-shared practice designated in the~~
18.8 ~~conservation plan is less than the statutory payment limit described in item B, the state shall~~
18.9 ~~only pay the actual cost of the installation. The state board reserves the right to approve~~
18.10 and provide funding for cost-shared practices directly or through its authorized agents.

18.11 Subp. 3. **Payment for in-kind services.** In-kind services provided by the landowner
18.12 including, but not limited to, earthwork, seedbed preparation, and seeding, may be
18.13 credited to the landowner's share of the total cost of establishing the cost-shared practice.
18.14 The district board shall credit only those costs it determines to be practical and reasonable
18.15 and may approve receipts or invoices directly or through its authorized agents.

18.16 Subp. 4. **Funds from other sources.** Conservation easement program cost-sharing
18.17 funds may be augmented by funds from other agencies, organizations, or individuals.
18.18 ~~Securing these funds is the responsibility of the landowner.~~

18.19 **8400.3730 FAILURE OF APPROVED PRACTICES.**

18.20 Subpart 1. **Cost-shared practices.** A landowner is not in violation of the
18.21 conservation easement if the failure, in whole or part, of a cost-shared practice was caused
18.22 by reasons beyond the landowner's control such as extreme weather conditions. In these
18.23 instances, the district board may recommend to the state board that conservation easement
18.24 program cost-sharing funds be encumbered for reestablishment of the cost-shared practice.
18.25 The encumbrance must comply with the limits ~~in Minnesota Statutes, section 103F.515,~~
18.26 ~~subdivision 6, paragraph (a), clauses (1) and (2)~~ prescribed by the state board. In no case

19.1 may a district board authorize conservation easement program financial assistance to a
19.2 landowner for the reestablishment of cost-shared practices that were removed or altered
19.3 by the landowner, or that have failed due to improper maintenance during the term of the
19.4 conservation easement.

19.5 Subp. 2. **All other approved practices.** A landowner is not in violation of the
19.6 conservation easement if the failure of approved practices was caused by reasons beyond
19.7 the landowner's control.

19.8 **8400.3830 VIOLATIONS AND ENFORCEMENT.**

19.9 [For text of subp 1, see M.R.]

19.10 Subp. 2. **State board action.** Upon notification ~~by the district board~~ or discovery
19.11 of a violation of a conservation agreement, conservation easement, or conservation plan,
19.12 the state board shall take action to resolve the violation.

19.13 A landowner who violates the terms of a conservation agreement, conservation
19.14 easement, or conservation plan under this chapter, or induces, assists, or allows another to
19.15 do so, is liable to the state for treble damages if the violation is willful or double damages if
19.16 the violation is not willful. The amount of damages is the amount needed to make the state
19.17 whole or the amount the landowner has gained due to the violation, whichever is greater.

19.18 If the state board is not successful in resolving the violation, it may request the
19.19 state attorney general to commence legal action to enforce the conservation agreement,
19.20 conservation easement, or conservation plan.

19.21 [For text of subp 3, see M.R.]

19.22 **REPEALER.** Minnesota Rules, parts 8400.0100, subparts 2a, 4, 10a, 14b, 15, 16, 16a,
19.23 16b, 18a, 18b, 19a, 20a, 20b, 20d, 22a, 25, 26, and 27; 8400.0200; 8400.0300, subparts
19.24 1 and 3; 8400.0600, subparts 1 and 3; 8400.0700; 8400.0800; 8400.0900, subpart 3;
19.25 8400.1000; 8400.1100; 8400.1200; 8400.1250; 8400.1300; 8400.1400; 8400.1405;

- 20.1 8400.1460; 8400.1500; 8400.1600; 8400.3030, subparts 6, 6a, 10a, 19, 20, 20a, 24, 25, 26,
- 20.2 28, 32, 39c, 40, 44, and 46; 8400.3060; and 8400.3870, are repealed.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Land and Water Treatment Program

AGENCY: Board of Water and Soil Resources

MINNESOTA RULES: Chapter 8400

The attached rules are approved for
publication in the State Register

Cindy K. Maxwell
Cindy K. Maxwell
Senior Assistant Revisor