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CHAPTER 8400

BOARD OF WATER AND SOIL RESOURCES

LAND AND WATER TREATMENT ~~COST-SHARE~~ PROGRAM

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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.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

Posted: *October 4, 2001*

DEFINITIONS EROSION CONTROL AND WATER MANAGEMENT PROGRAM

8400.0200 AUTHORITY.

Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the conservation districts, to administer a program of cost-sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0050 to 8400.1800~~1900~~ provide procedures and criteria to be followed by the state board in allocating cost-sharing funds to conservation districts, and standards and guidelines that the conservation district boards shall use in allocating funds to land occupiers.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

Posted: *October 4, 2001*

8400.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 8400.0050 to 8400.1800~~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 [Repealed, 20 SR 2185]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 [Repealed, 20 SR 2185]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. ~~**Administrative Guidelines.** "Administrative Guidelines" means the Administrative Guidelines for the State Cost Share Program, being the most current compilation of the approved practices, practice guidelines, administrative guidelines, and examples of administrative forms provided to conservation districts by the state board to assist in locally administering the state cost share program. The publication is not subject to frequent change, is available at the State Law Library, and is incorporated by reference.~~

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 (e), and according to the most recent ~~policy~~ version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans 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. ~~**Approved practice.** "Approved practice" means a conservation practice that qualifies for state cost sharing and that has been approved by the state board.~~

Subp. 5. [Repealed, 20 SR 2185]

Subp. 5a. **Comprehensive local water plan.** "Comprehensive local water plan" means a local water plan authorized under Minnesota Statutes, section 103B.311; a watershed overall plan required under Minnesota Statutes, section 103D.401; a watershed management plan required under Minnesota Statutes, section 103B.231; or a county groundwater plan authorized under Minnesota Statutes, section 103B.255.

Subp. 6. [Repealed, 20 SR 2185]

Subp. 7. [Repealed, 9 SR 2439]

Subp. 7a. [Repealed, 20 SR 2185]

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 policy version of the Guidelines for Soil and Water Conservation District Comprehensive and Annual Plans 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. **Conservation district technical representative.** "Conservation district technical representative" means a district employee assigned by the conservation district board or other designee who has expertise in the design and application of conservation practices.~~

Subp. 10b. **Conservation practices.** "Conservation practices" means practices applied to the land for the purpose of controlling or preventing soil erosion, sedimentation, nutrient runoff, or other water pollution to maintain the sustainable use of soil and water and other natural resources.

Subp. 11. [Repealed, 20 SR 2185]

Subp. 12. [Repealed, 20 SR 2185]

Subp. 13. [Repealed, 20 SR 2185]

Subp. 14. **Effective life.** "Effective life" means the time span for which a conservation practice effectively fulfills its intended purpose.

Subp. 14a. [Repealed, 20 SR 2185]

~~Subp. 14b. **Farm Service Agency.** "Farm Service Agency" means the Farm Service Agency, an agency of the United States Department of Agriculture.~~

~~Subp. 15. **Field Office Technical Guide.** "Field Office Technical Guide" means the document providing technical standards and specifications for conservation practices as provided by the Natural Resource Conservation Service and adopted by the conservation district board.~~

~~Subp. 16. **Group spokesperson.** "Group spokesperson" means a principal land occupier designated by the individuals involved in a group project who is authorized to speak for the entire group in negotiations with a conservation district for cost share assistance.~~

~~Subp. 16a. **High priority erosion problems.** "High priority erosion problems" means areas where erosion from wind or water is occurring equal to, or in excess of, 2 x T tons per acre per year or is occurring on any area that exhibits active gully erosion or is identified as high priority in the comprehensive local water plan or the conservation district's comprehensive plan.~~

~~Subp. 16b. **High priority water quality problems.** "High priority water quality problems" means areas where sediment, nutrients, chemicals, or other pollutants discharge to Department of Natural Resources-designated protected waters or to any high priority waters as identified in a comprehensive local water plan or the conservation district's comprehensive plan, or discharge to a sinkhole or groundwater. The pollutant delivery rate to the water source is in amounts that will impair the quality or usefulness of the water resource.~~

Subp. 17. [Repealed, 9 SR 2439]

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

~~Subp. 18a. **Landowner.** "Landowner" means a person, corporation, or legal entity that holds title to a parcel of land.~~

~~Subp. 18b. **Natural Resource Conservation Service.** "Natural Resource Conservation Service" means the Natural Resource Conservation Service, an agency of the United States Department of Agriculture.~~

Subp. 19. [Repealed, 20 SR 2185]

~~Subp. 19a. **Other recognized technical practices.** "Other recognized technical practices" means any conservation practice or compilation of such practices not on the approved list of conservation practices that have been approved by the state board for cost share assistance on a case by case basis.~~

Subp. 20. [Repealed, 20 SR 2185]

Subp. 20a. ~~**Protected waters.** "Protected waters" means those waters of the state identified as public waters or wetlands under Minnesota Statutes, section 103G.005, subdivision 15, and inventoried under Minnesota Statutes, section 103G.201, and identified on a protected waters inventory map available in a county auditor's office.~~

Subp. 20b. ~~**Registered professional engineer.** "Registered professional engineer" means a person who is duly registered to practice professional engineering according to Minnesota Statutes, sections 326.02 to 326.15.~~

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

Subp. 20d. ~~**Sinkhole.** "Sinkhole" means a depression or hole in the earth's surface caused by dissolving of underlying limestone carbonate bedrock and subsequent settling or collapse of surficial soils.~~

Subp. 21. [Repealed, 20 SR 2185]

Subp. 22. [Repealed, 20 SR 2185]

Subp. 22a. ~~**Special project.** "Special project" means a conservation project or program including but not limited to those projects or programs that accelerate implementation of innovative soil and water conservation activities.~~

Subp. 23. **State board.** "State board" means the state Board of Water and Soil Resources created in Minnesota Statutes, section 103B.101.

Subp. 24. [Repealed, 9 SR 2439]

Subp. 25. ~~**T.** "T" means the soil loss tolerance that is the maximum average annual rate of soil loss from sheet and rill erosion or wind erosion, expressed in tons per acre per year, that is allowed yet still sustains the productive capacity of the soil to produce food and fiber over the long term.~~

Subp. 26. ~~**2 x T.** "2 x T" means soil erosion at the rate of two times T.~~

Subp. 27. ~~**Technical approval authority.** "Technical approval authority" means the authorization granted in accordance with the administrative guidelines for the state cost share program to a conservation district technical representative to provide comprehensive technical assistance for individual conservation practices, including associated technical sign-off as the conservation district technical representative of record.~~

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185*

Posted: *October 4, 2001*

8400.0200 AUTHORITY.

~~Minnesota Statutes, section 103C.501, authorizes the state board, in cooperation with the conservation districts, to administer a program of cost sharing with land occupiers for the installation of soil and water conservation practices. Parts 8400.0050 to 8400.1800 provide procedures and criteria to be followed by the state board in allocating cost sharing funds to conservation districts, and standards and guidelines that the conservation district boards shall use in allocating funds to land occupiers.~~

~~Statutory Authority: *MS s 40.036; 103C.501* History: *9 SR 2439; L 1987 c 358 s 34; 20 SR 2185* Posted: *October 4, 2001*~~

STATE BOARD FUNCTIONS

8400.xxxx PROGRAM POLICY.

The State board shall adopt policies providing for administration and implementation of Parts 8400.0500 to 8400.1900.

8400.0300 APPROVED CONSERVATION PRACTICES.

Subpart 1. ~~Approved practices.~~ The state board, in consultation with the conservation districts, shall maintain a list of practices that are eligible for cost share funds, along with guidelines pertaining to the components of the practices that are eligible or ineligible for cost share funds. The list includes farmstead windbreaks and is contained in the Administrative Guidelines.

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

~~A. The primary purpose of all practices must be the control of soil erosion, sedimentation, or chemical or nutrient runoff or infiltration that impairs water quality. Farmstead windbreaks are exempt from this requirement.~~

A. The objectives of these approved **conservation** practices may include, but are not limited to, activities that:

- (1.) control nutrient runoff;
- (2.) **control sedimentation;**
- (3.) divert runoff to protect and improve water quality;
- (4.) reduce wind erosion;
- (5.) control gully, rill, or sheet erosion;
- (6.) protect shoreland from erosion;
- (7.) control stormwater runoff;
- (8.) protect or improve surface water and groundwater quality;
- (9.) **provide energy conservation and snow protection; or**
- (10.) **alleviate water quantity problems due to altered hydrology.**

~~B. All practices cost shared under this program 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 the conservation district board approves the final payment and the project is considered complete.~~

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

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

~~Subp. 3. Objectives of approved practices. The Administrative Guidelines contains a list of approved practices. The objectives of these approved practices may include, but are not limited to, activities that:~~

~~A. control nutrient runoff;~~

~~B. stabilize critical erosive areas;~~

~~C. divert runoff to protect and improve water quality;~~

~~D. reduce wind erosion;~~

~~E. control gully, rill, or sheet erosion;~~

~~F. protect shoreland from erosion;~~

~~G. control stormwater runoff; or~~

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~~H. protect or improve surface water and groundwater quality;~~

Approved practices must meet the criteria listed in subpart 2.

Statutory Authority: *MS s 40.036; 103C.501; L 1999 c 231 s 203*

History: *9 SR 2439; 20 SR 2185; 24 SR 1240*

Posted: *October 4, 2001*

8400.0400 [Repealed, 20 SR 2185]

Posted: *October 4, 2001*

8400.0500 MAXIMUM COST-SHARE RATES.

The maximum cost-share rates established by the state board represent the maximum percent of the total cost of a **conservation** practice that may be funded by 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.~~

Statutory Authority: *MS s 40.036*

Posted: *October 4, 2001*

8400.xxxx 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 subdivision shall be construed in the same manner as a conservation restriction under 84.65.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS.

Subpart 1. ~~**Comprehensive plan.** Before the state board can allocate cost share funds to a conservation district it must approve the conservation district's comprehensive plan, including its most recent amendment and the annual work plan. that includes the application and justification for needed cost share funds. The plans must be in a format required by Minnesota Statutes, section 103C.331, subdivision 11, and the state board.~~

Subp. 2. [Repealed, 9 SR 2439]

Subp. 3. ~~Review criteria. The state board shall review all conservation district applications for cost share funds based on the following criteria:~~

~~A. the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district comprehensive and annual plans and comprehensive local water plan;~~

~~B. priorities for the control of soil erosion or water quality problems as established in the Administrative Guidelines of the state board;~~

~~C. historical success of the conservation district in applying soil and water conservation practices;~~

~~D. availability of cost share funds from other sources; and~~

~~E. the ability of the conservation district to expend the funds in a timely manner.~~

Subp. 4. **Grants to conservation districts.** The state board ~~may shall annually~~ allocate cost-share funds to conservation district boards that have fully complied with **Minnesota Statutes, section 103C.501, subdivision 3; all state cost share erosion control and water management program rules; and program policies and comprehensive and annual planning guidelines as prescribed by the state board. At least 70 percent of the cost-sharing funds available statewide will be allocated to conservation 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 conservation 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.

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

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

~~8400.0700 PROGRAM REPORTING AND MONITORING.~~

~~For the purpose of reporting and monitoring the progress of the program and use of funds, each conservation district shall submit an annual report of the year's accomplishments according to the guidelines and requirements established by the state board. The state board shall require additional special reports, including, but not limited to, summaries of practice site inspections and special projects.~~

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

DISTRICT FUNCTIONS

~~8400.0800 APPLICATION FOR FUNDS BY DISTRICTS.~~

~~Each district shall apply for funds as indicated in part 8400.0600.~~

Statutory Authority: *MS s 40.036*

Posted: *October 4, 2001*

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS.

Subpart 1. **General.** Following receipt of grant funds from the state board, a conservation district is responsible for administration of the funds in accordance with Minnesota Statutes, chapter 103C, the Administrative Guidelines, and all other applicable laws. The conservation district board shall make all decisions concerning use of these funds in accordance with parts 8400.0050 to 8400.1800-1900, the Administrative Guidelines program policies, and all other applicable laws. All funds allocated to conservation districts must be used for the purposes designated by the state board.

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

A. the extent of high priority erosion or water quality problems in the conservation district as outlined in the conservation district's comprehensive and annual plans;

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

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

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

~~E. cost share funds available; and~~

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

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

~~Subp. 3. **Reencumbering funds.** Prior to the end of the grant period for which the state board has granted the cost share funds, a conservation district board may reencumber all funds resulting from canceled projects or from those projects that did not use the full amount encumbered. For unencumbered funds remaining after the grant period, the conservation district board shall follow the procedures described in part 8400.1460.~~

Subp. 3. Criteria for conservation district board review. The conservation district board shall use the following factors to determine practice eligibility and review of applications for conservation practice funding:

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

(1) grant the soil and water conservation district's representatives access to the parcel where the conservation practice will be located;

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

(3) be responsible for operation and maintenance of conservation practices applied under this program according to an operation and maintenance plan prepared by the conservation district technical representative.

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

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

D. Conservation practices where construction has begun prior to conservation district approval are ineligible for financial assistance. **The Board may waive this requirement for emergency needs.**

Subp. 4. Subpart 1 General Entering into a contract. After completion of the conservation district board review of practice eligibility, the conservation district board shall either approve or deny the application.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

~~8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS.~~

~~Land occupiers seeking assistance under this program shall apply to the conservation districts on forms provided by the state board and available from the conservation district office. Each application must be filled out in its entirety and must be signed by the land occupier. If the land occupier is not the landowner, the application must also bear the landowner's signature.~~

~~**Statutory Authority:** *MS s 40.036; 103C.501*~~

~~History: 9 SR 2439; 20 SR 2185~~
~~Posted: October 4, 2001~~

~~8400.1100 GROUP PROJECT.~~

~~Where the cooperation of several land occupiers is required to solve an erosion or water quality problem, the conservation district may share the cost of such a group project if all of the land occupiers are eligible as individuals and the practices satisfy the criteria of the program. The land occupiers must reach agreement on division of payments and designate a group spokesperson. The spokesperson must sign the application on behalf of the group and negotiate all project details with the conservation district. Payment for the conservation district's share of the practice shall be issued to the group spokesperson who will be responsible for executing the division of payment plan prepared by the group.~~

~~Statutory Authority: MS s 40.036; 103C.501~~
~~History: 9 SR 2439; 20 SR 2185~~
~~Posted: October 4, 2001~~

~~8400.1200 COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS.~~

~~Subpart 1. **Land in more than one conservation district.** If a project involves land in more than one conservation district, application for the entire project must be made to the conservation district containing the majority of the project lands.~~

~~Subp. 2. **Pooling cost share allocation for joint projects.** Conservation district boards may enter into an agreement to pool all or portions 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.~~

~~Statutory Authority: MS s 40.036; 103C.501~~
~~History: 9 SR 2439; 20 SR 2185~~
~~Posted: October 4, 2001~~

~~8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION.~~

~~A determination of the effectiveness of a practice to address the erosion or water quality problem and a cost estimate must be made by the conservation district technical representative prior to the conservation district board's review of the application for cost share funds. The assessment and cost estimate must be conducted by an individual with the appropriate level of technical approval authority or by a registered engineer with expertise in the design of the conservation practices.~~

~~Statutory Authority: MS s 103C.501~~
~~History: 20 SR 2185~~
~~Posted: October 4, 2001~~

~~8400.1300 CRITERIA FOR CONSERVATION DISTRICT BOARD REVIEW.~~

~~Criteria for conservation district board review:~~

- ~~A. The practice needed to solve the problem must be on the list of approved practices presented in the Administrative Guidelines or must have received approval from the state board.~~
- ~~B. The primary purpose of the requested practice must be to treat a high priority erosion problem or high priority water quality problem, except for farmstead windbreaks.~~
- ~~C. The requested practice must be consistent with conservation district plans and priorities.~~
- ~~D. The application must be signed by the land occupier and the landowner, if different, indicating their agreement to:~~

~~(1) grant the soil and water conservation district's representatives access to the parcel where the conservation practice will be located;~~

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

~~(3) be responsible for operation and maintenance of practices applied under this program according to an operation and maintenance plan prepared by the conservation district technical representative.~~

~~E. Costs to repair damage to conservation practices installed with state cost share dollars are eligible if the damage was caused by reasons beyond the control of the land occupier.~~

~~F. If the practice has fully met or exceeded its designed effective life, the cost to reconstruct the practice is eligible for cost share assistance.~~

Statutory Authority: *MS s 40.036; 103C.501; L 1999 c 231 s 203*

History: *9 SR 2439; 20 SR 2185; 24 SR 1240*

Posted: *October 4, 2001*

8400.1400 CONSERVATION DISTRICT APPROVAL.

~~Subpart . 1. **General.** After completion of the conservation district board review, the conservation district board shall either approve or deny the application. If it is approved, the conservation district board shall instruct the chair or acting chair to sign the application. Once it is signed, the application becomes the contract between the conservation district and land occupier and serves as the authorization to construct the practice according to the approved conservation practice plan. Practices where construction has begun prior to conservation district approval are ineligible for financial assistance. Changes in any provisions of the contract are subject to review and approval by the conservation district board pursuant to part 8400.1600, subpart 1.~~

~~If the application is denied, the conservation district board shall notify the land occupier in writing within 30 days after conservation district board action of the reason for denial.~~

~~Subp. 2. **Conservation practice plans.** The project plans for conservation practices must be prepared according to standards in the Field Office Technical Guide or other standards approved by the state board and must be approved by a conservation district technical representative with the appropriate level of technical approval authority. Plans prepared by a registered professional engineer must meet Field Office Technical Guide standards, meet other standards approved by the state board, or be certified as appropriate standards by the registered professional engineer. Upon completion and technical approval of the plan, one copy must be given to the land occupier and one copy retained with the project file located in the conservation district office.~~

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 17 SR 1279; 20 SR 2185*

Posted: *October 4, 2001*

8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT.

~~Subpart 1. Time limit and cancellation. Projects not started within 18 months after conservation district board approval must be canceled unless an amendment to the project contract has been approved by the conservation district board. Projects not completed by the end of the state's third fiscal year after initial conservation district board approval must be canceled unless prior written approval of the state board has been received.~~

~~Subp. 2. Partial payment. In cases where weather or other unanticipated circumstances beyond the control of the land occupier force postponement of certification of completion until the following construction season, the conservation district board may issue a partial payment for the work that has been completed. The conservation district board shall not consider issuing a partial payment unless:~~

~~A. the anticipated completion date complies with subpart 1;~~

B. the completed work meets the requirements of part 8400.1400, subpart 2; and

C. the conservation district technical representative has reviewed the work and has defined the total percent of construction that is complete.

Subp. 3. Partial payment conditions. If the conservation district issues a partial payment under subpart 2, the following conditions apply:

A. payment percentages must comply with part 8400.0900, subpart 2;

B. the balance of the project must be paid by the conservation district board upon the satisfactory completion of the total project;

C. all expenses incurred to correct damage caused by the land occupier's failure to expeditiously complete the conservation practice must be borne by the land occupier;

D. land occupiers receiving partial payments must complete the project within a time deemed reasonable by the conservation district board; and

E. land occupiers not completing partially paid projects shall be considered as violating part 8400.1700 and shall be directed, unless otherwise authorized by the state board as provided elsewhere in part 8400.1700, to return the amount of financial assistance received.

Every request for partial payment will be considered by the conservation district board on its own merits.

Subp. 4. Denial. If the conservation district board denies a request for partial payment under subpart 2, the board shall notify the land occupier within 30 days of the reasons for denial of the request.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

8400.1460 RETURN OF ALLOCATED FUNDS.

Cost share funds unencumbered by the conservation district board after the grant period must be returned to the state board within 30 calendar days following the end of that grant period.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

Posted: *October 4, 2001*

8400.1500 CONSERVATION DISTRICT RECORDS.

The conservation district shall maintain a current ledger of all cost share contracts on forms provided by the state board. The ledger must specify the land occupiers with whom the conservation district has contracted, the practices involved, the status of construction, and a total of funds encumbered. The conservation district shall also document efforts to identify and contact land occupiers with high priority erosion problems.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

8400.1600 EXECUTING THE COST SHARE CONTRACT.

Subpart 1. **Amending cost share contracts.** Because of extreme circumstances such as, but not limited to, weather and unforeseen geologic conditions, it may be desirable to amend the original cost share contract. If changes to the original cost share contract are needed, an amendment must be approved by the conservation district board. The conservation district board shall not approve amendments that increase the originally approved cost share percentage, nor shall the conservation district board approve any amendments after the approval to issue final payment on the original contract has been made.

Subp. 2. Construction of practice. Construction of the practices must be monitored by the conservation district board to ensure compliance with part 8400.1400, subpart 2. Upon completion, the conservation district technical representative with appropriate technical approval authority or the registered engineer shall certify whether the practice has been satisfactorily constructed according to the approved conservation practice plans and meets the design criteria of the practice as specified in the Field Office Technical Guide or other standards certifiable by a registered professional engineer or other standards approved by the state board. No certification shall be made until all specifications have been satisfied. Exceptions for partial completion must be according to part 8400.1405, subpart 3. Upon certification of completion, the land occupier shall contact the conservation district for payment and shall present documentation of all costs incurred in the installation of the practice in the form of receipts or invoices.

Subp. 3. In kind services and materials. In kind services and materials provided by the land occupier such as, but not limited to, earth work, seedbed preparation, seeding, and permanent fencing materials may be credited toward the land occupier's share of the total cost of the practice. The conservation district board shall determine whether charges for in kind services and materials are practical and reasonable.

Subp. 4. Actual cost different than estimated cost. In cases where the actual cost of the practice exceeds the estimated cost, the conservation district may only share the approved percentage of the estimated cost, except when an amendment to increase the cost estimate listed on the cost share contract has been approved by the conservation district board. Where the actual cost is less than the estimated cost, the conservation district shall only share the approved percentage of the actual cost of the practice.

Subp. 5. Issuing cost share payments. The conservation district board shall review the receipts or invoices provided by the land occupier to determine the actual cost of the practice. When the conservation district determines that all claims are practical and reasonable, it shall authorize issuance of a check for the conservation district's share of the practice. If the conservation district board determines that certain claims are not justified, it shall notify the land occupier in writing of the unjustified claims within 30 days. The conservation district board shall then authorize the issuance of a check for the conservation district's share of the justified claims.

Statutory Authority: *MS s 40.036; 103C.501*

History: *9 SR 2439; 20 SR 2185*

Posted: *October 4, 2001*

8400.1650 RECORDING CONSERVATION PRACTICES.

When a district board determines that long-term maintenance of a conservation practice is desirable, the board may require that maintenance be made a covenant upon the land for the effective life of the conservation practice. A covenant under this subdivision shall be construed in the same manner as a conservation restriction under 84.65. 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 conservation district on the property title. The conservation district board may require the recording of practices where cost share payments are less than \$50,000 where such action is considered appropriate by the conservation district board. Recording procedures, including the prescribed forms, are described in the administrative guidelines for the state cost share program.

Statutory Authority: *MS s 103C.501*

History: *20 SR 2185*

Posted: *October 4, 2001*

8400.1700 MAINTENANCE.

Subpart 1. **Land occupier maintenance responsibilities.** The land occupier is responsible for operation and maintenance of conservation practices applied under this program to ensure that their conservation objective is met and the effective life, a minimum of ten years, is achieved. Should the land occupier fail to maintain the conservation practices during their effective life, the land occupier is liable to the state of Minnesota for up to one-hundred-fifty percent the full amount of financial assistance received to install and establish the conservation

practice. The land occupier is not liable for cost-share assistance received if the failure was caused by reasons beyond the land occupier's control, or if soil and water conservation practices are applied at the land occupier's expense which provide equivalent protection of the soil and water resources.

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

Statutory Authority: *MS s 40.036; 103C.501*
History: *9 SR 2439; 20 SR 2185*
Posted: *October 4, 2001*

8400.1750 PRACTICE SITE INSPECTIONS.

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

Statutory Authority: *MS s 103C.501*
History: *20 SR 2185*
Posted: *October 4, 2001*

8400.1800 APPEALS.

Land occupiers may appeal a conservation district's action within 60 days of receiving notice of the action by submitting a written request to the conservation district board asking the board to reconsider its decision. Should the land occupier and the conservation district board reach an impasse, the land occupier may appeal the conservation district board's decision to the state board within 60 days of receiving notice of the district board's final decision. If an informal hearing is granted, the state board or its appointed mediator shall hear all testimony offered, and shall accept written testimony for ten days after the hearing. The mediator, if one is used, shall report the findings and recommendation to the state board. The state board shall make its decision on the appeal within 60 days of the hearing date or 60 days after receiving the mediator's report, upholding, reversing, or amending the decision of the conservation district board.

Statutory Authority: *MS s 40.036; 103C.501*
History: *9 SR 2439; 17 SR 1279; 20 SR 2185*
Posted: *October 4, 2001*

8400.1900 REPORTS TO STATE BOARD.

For the purpose of reporting and monitoring the progress of the program and use of funds, each conservation district shall submit an annual report of the year's accomplishments according to the guidelines and requirements established by the state board. ~~Each district shall submit to the state board the reports identified in part 8400.0700.~~

Statutory Authority: *MS s 40.036*
Posted: *October 4, 2001*

8400.1950 [Repealed, 20 SR 2185]

Addition of text to the rule
Text moved from another location in the rule
Text moved to another location in the rule
Text removed from the rule, not needed in policy
Text to be moved to policy

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8400.2000 [Repealed, 20 SR 2185]

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8400.2800 [Repealed, 20 SR 2185]

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COST SHARE RATES EASEMENT PROGRAM

~~8400.2900 DISTRICT RATES.~~

~~Each district shall establish its cost share rates as provided in part 8400.0900.~~

~~Statutory Authority: *MS s 40.036*~~

~~Posted: *October 4, 2001*~~