

# Minnesota Board of Water and Soil Resources

## REQUEST FOR COMMENTS

### **Possible Amendment to Rules Governing Excessive Soil Loss, *Minnesota Rules*, Chapter 8400.4000; Revisor's ID Number R-04457**

**Subject of Rules.** The Minnesota Board of Water and Soil Resources (Board) requests comments on possible amendments to the rules governing excessive soil loss. The Board is considering rule amendments to:

- reconcile the rule with statute changes from 2015 and 2016, as detailed below;
- establish soil erosion standards that are technically feasible and economically reasonable; and
- as time and capacity allows, implement changes identified during the rulemaking process and other miscellaneous changes that will improve the efficiency, effectiveness, and/or outcomes of the rule.

**Statutory Changes in 2015 and 2016.** During the 2015 legislative regular and 1<sup>st</sup> special sessions the law was changed by:

- repealing the requirement that the law is only applicable with a local government ordinance (*Minnesota Statutes* 103F.451)
- creating specific Administrative Penalty Order (APO) authority for BWSR and counties to enforce the law (*Minnesota Statutes* 103B.101);
- removing the option of local enforcement through a civil penalty (*Minnesota Statutes* 103F.421, subd. 5), and
- revising the requirements for state cost-share of corrective conservation practices (*Minnesota Statutes* 103F.421).

During the 2016 legislative session additional amendments were made relating to BWSR's authority to impose APOs:

- requiring the Board to adopt an APO procedures plan before exercising its APO authority; and
- establishing that any proceeds from an administrative penalty order under this section are remitted to the county or watershed district with jurisdiction over the noncompliant site or to the Board (§[103B.101](#), sub. 12 and 12a).

**Persons Affected.** The amendment to the rules will affect many sectors whose activities may influence Minnesota's soil resources, including agricultural landowners and operators; local governments responsible for implementing soil loss ordinances; and individuals and organizations with an interest in soil health and water quality protections, such as environmental, agricultural, development, and public advocacy groups.

**Statutory Authority.** The Board is authorized under Minnesota Statute 103F.401 through 103F.455 to establish rules to govern implementation of the Excessive Soil Loss statute.

**Public Comment.** Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on March 22, 2017. The Board does plan to appoint an advisory committee to comment on the possible rules.

**Rules Drafts.** The Board has not yet drafted the possible rule amendments.

**Agency Contact Person.** Written comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Suzanne Rhees at the Minnesota Board of Water and Soil Resources, 520 Lafayette Road North, St. Paul, MN 55155, phone (651) 296-0768, fax (651) 297-5615; or by *email* at *soillosrules@state.mn.us*.

**Alternative Format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are formally proposed via a Notice of Intent. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: January 31, 2017

John Jaschke, Executive Director  
Minnesota Board of Water and Soil Resources