

OCT 10 1995



October 9, 1995

Ms. Maryanne B. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
Saint Paul, Minnesota 55155

One West Water Street
Suite 200
St. Paul, MN 55107
(612) 296-3767
Fax (612) 297-5615

Field Offices

Northern Region:

394 S. Lake Avenue
Room 403
Duluth, MN 55802
(218) 723-4752
Fax (218) 723-4794

3217 Bemidji Avenue N.
Bemidji, MN 56601
(218) 755-4235
Fax (218) 755-4201

217 S. 7th Street
Suite 202
Ainerd, MN 56401-3660
(218) 828-2383
Fax (218) 828-6036

Southern Region:

Highway 15 S.
Box 756
New Ulm, MN 56073
(507) 359-6074
Fax (507) 359-6018

40-16th Street SE
Suite A
Rochester, MN 55904
(507) 285-7458
Fax (507) 280-2875

Box 267
1400 E. Lyon Street
Marshall, MN 56258
(507) 537-6060
Fax (507) 537-6368

Metro Region:

One West Water Street
Suite 250
St. Paul, MN 55107
(612) 282-9969
Fax (612) 297-5615

Equal opportunity employer

RE: In the Matter of Proposed Amendments to the Permanent Rules of the Minnesota Board of Water and Soil Resources Governing the State Cost-Share Program.

Dear Ms. Hruby:

The Minnesota Board of Water and Soil Resources intends to adopt amendments to the permanent rules governing the State Cost-Share Program. We submitted a Notice of Intent to Adopt Rules Without a Public Hearing for publication in the October 23, 1995 issue of the *State Register*.

As required by *Minnesota Statutes*, sections 14.131 and 14.23, the board has prepared a Statement of Need and Reasonableness that is now available to the public. Also as required, a copy of this Statement is enclosed in this mailing.

For your information, we are also enclosing a copy of the Notice of Intent to Adopt Rules Without a Public Hearing and a copy of the proposed amendments to the permanent rule in this matter.

If you have any questions about these rules please contact me at 297-7965.

Sincerely,

A handwritten signature in black ink that reads "Marybeth Block". The signature is fluid and cursive.

Marybeth Block
Special Projects Coordinator

enclosures: Statement of Need and Reasonableness
Notice of Intent to Adopt Rules Without a Public Hearing
Proposed Amendments to the Permanent Rules

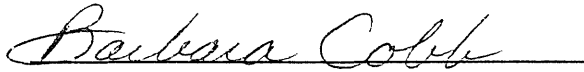
cc: Ron Harnack, Executive Director
Doug Thomas, Water Planning Coordinator
Keith Grow, Rule Work Team Chair

**CERTIFICATE OF THE
BOARD OF WATER AND SOIL RESOURCES
AUTHORIZING RESOLUTION**

I, **Barbara Cobb**, do hereby certify that I am a member and the Chair of the Board of Water and Soil Resources, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Water and Soil Resources, duly and properly called and held on the 27th day of September, 1995, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that Ronald Harnack, the Executive Director of the Board of Water and Soil Resources, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt (rules without a public hearing) governing the State Cost-Share Program to all persons who have registered their names with the Board for that purpose and publish the Notice and rules in the State Register, and to perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 27th day of September, 1995.


Barbara Cobb, Chair
Board of Water and Soil Resources

Attest by one other Board Member:


Signature of Attesting Board Member

Barbara Uppgaard
Printed Name of Attesting Board Member

**STATE OF MINNESOTA
BOARD OF WATER AND SOIL RESOURCES**

**In the matter of the Proposed Amendments
to Rules of the Board of Water and Soil
Resources Relating to the State Cost-Share
Program**

**STATEMENT OF NEED
AND REASONABLENESS**

GENERAL STATEMENT

The Minnesota Board of Water and Soil Resources ("board", BWSR) administers several natural resources conservation programs through soil and water conservation districts ("district", SWCD). The proposed amendments to this rule (parts 8400.0500 to 8400.2800) govern the state cost-share program. This program provides funding to conservation districts so they can provide technical and financial assistance to land occupiers to install erosion or sediment control or water quality protection practices on the lands they manage or own.

The proposed amendments to the administrative rules of the state cost-share program were compiled with the cooperation of conservation districts. The amendments to the permanent rules propose to improve the application of the state cost-share program by:

- 1) improving the ability of conservation districts to target program dollars to priority watersheds or waterbodies identified in the county's comprehensive local water plan or the district's comprehensive plan;
- 2) incorporating updated statutory references due to *Laws of Minnesota 1990, Chapter 391*, that recodified, clarified and relocated provisions relating to water law;
- 3) providing the ability to use new technologies developed to treat erosion, sedimentation and water quality problems; and
- 4) improving the clarity of the permanent rule.

The board began to solicit comments regarding needed program improvements from districts in 1990. In February of 1995, the board directed staff to draft amendments to the program's administrative rules and develop administrative guidelines. A work team consisting of BWSR field and central office staff compiled the proposed amendments to the rule considering the comments gathered from conservation districts. In addition, the work team conferred with the Minnesota Association of Soil and Water Conservation Districts (MASWCD) and state board members serving on the cost-share committee. Comments regarding the proposed revisions were solicited from BWSR staff, MASWCD and board committee members between May 1-25, 1995. The work team received eight comments and considered them for incorporation into the rule amendments. The *Minnesota State Register* (Vol. 20,

No. 2) published A Notice of Solicitation for Outside Information and Opinions regarding revision of rules governing the State Cost-Share Program on July 10, 1995. The board received no comments from this solicitation. The proposed rule amendments were mailed to districts and interested agencies and organizations on June 17, 1995, along with an invitation for their review and comment before July 19, 1995. The work team received and considered fifteen comments. The final draft was mailed to conservation districts, MASWCD committee members, all board members and interested agencies on August 14, 1995. The board endorsed the final draft as amended at their September 27, 1995 meeting and adopted a resolution to notice the rule revision for adoption without a public hearing.

The rules were initially promulgated in 1977, with the most recent revision occurring ten years ago. During the ensuing decade the need to amend the rules grew as the priorities of local governments, as well as those of the state, evolved and became directed to particular management units such as watersheds or priority waterbodies. In addition, the technology to treat resource problems and the technical delivery systems has also changed. The proposed revisions make the rule consistent with recodified statutory citations and other program rules of SWCD administered programs.

STATUTORY AUTHORITY

Minnesota Statutes 103C.501 authorizes the board, through local conservation districts, to enter into cost-share contracts for erosion control and water management. *Minnesota Statutes*, Subdivision 6 requires the board to adopt administrative rules for the Cost-Share Program. In addition, the board has general rule making authority for carrying out all of its programs pursuant to *Minnesota Statutes*, section 103B.101, subdivision 7.

SMALL BUSINESS CONSIDERATION

The proposed amendments to the rule are related to local government administration of a state program. Therefore, pursuant to *Minnesota Statutes* section 14.115, subdivision 7(2), the board is exempt from describing specific impacts to small business.

FISCAL IMPACT

Minnesota Statutes section 14.11, subdivision 1, does not apply because adoption of the proposed amendments will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the proposed amendments.

AGRICULTURAL LAND IMPACT

The proposed amendments to the rule pertain to cost-share contracts that provide financial assistance to land occupiers installing conservation practices to treat a soil erosion, sedimentation or water quality problem. The proposed amendments relate to the voluntary installation of conservation practices. Pursuant to *Minnesota Statutes* section 14.11, subdivision 2, the board is exempt from the requirements of *Minnesota Statutes* sections 17.80 to 17.84, because adoption of the proposed amendments will not result in direct and substantial adverse impacts on agricultural land.

ANALYSIS OF PROPOSED AMENDMENTS

A. NON-SUBSTANTIVE AMENDMENTS TO THE PERMANENT RULE.

Many amendments to the permanent rule have been proposed to:

1. improve the clarity of the rule by simplifying and updating the language and presenting information in chronological order.
2. delete definitions no longer used in the amended rule; and
3. update statutory and rule references.

Amendments to improve clarity include:

8400.0050, "purpose";

8400.0100, "definitions", subparts relating to:

- a) "approved practice",
- b) "comprehensive plan",
- c) "conservation district board",
- e) "Consolidated Farm Service Agency",
- f) "Field Office Technical Guide",
- g) "group spokesperson",
- h) "Natural Resources Conservation Service",
- i) "registered professional engineer",
- j) "sinkhole",
- k) "T";

8400.0300, "approved practices" subpart 2 relating to criteria for approved practices;

8400.0600, "allocation of funds to districts" subparts relating to:

- a) "comprehensive plan",
- b) "review criteria";

8400.0700, "program reporting and monitoring";

8400.0900, "conservation district administration of funds" subpart 2 relating to "maximum cost-share percentages", items A-E;

8400.1200, "cooperative and joint projects" subpart 1 relating to "land in more than one conservation district";

8400.1405, "project deadlines and partial payment", subparts relating to:

- a) "partial payment",
- b) "partial payment conditions";

8400.1600, "executing the cost-share contract", subparts relating to:

- a) "amending cost-share contracts",
- b) "issuing cost-share payments";

8400.1700, "maintenance" subparts relating to:

- a) "land occupier maintenance responsibilities",
- b) "reapplication or removal of practices";

8400.1800 "Appeals".

Amendments to delete definitions (reference no longer contained in the amended rule):

8400.0100 "definitions", subparts relating to:

- a) "adequately protected",
- b) "Agricultural Stabilization and Conservation Service",
- c) "area Conservationist",
- d) "assigned Soil Conservation Service personnel",
- e) "class I - IV soil",
- f) "descriptive maps",
- g) "district conservationist",
- h) "district cooperater",
- i) "district technician",
- j) "feedlot model",
- k) "nonproduction practice",
- l) "program plan",
- m) "shallow soils overlying fractured or cavernous bedrock",
- n) "soil and water conservation practices",
- o) "Soil Conservation Service";

Amendments to update statutory and rule references:

8400.0100, "definitions" subparts relating to:

- a) "scope",
- b) "annual plan",
- c) "comprehensive plan",
- d) "conservation district",
- e) "protected waters",
- f) "state board";

8400.0200, "authority";

8400.0900, "conservation district administration of program funds, subpart 1 relating to "general".

B. SUBSTANTIVE AMENDMENTS TO THE PERMANENT RULE.

8400.0100 DEFINITIONS

Added "Administrative Guidelines for the State Cost-Share Program" to reference the BWSR document that contains the procedural guidelines for the program, the list of approved practices and information related to approved practices.

Added "comprehensive local water plan" to reference a local planning document that identifies the water resource protection priorities of the county or other local government unit, along with identifying those geographic areas prone to severe soil erosion, sedimentation or water quality degradation problems.

Revised "conservation district board" to be consistent with the definition in *Minnesota Statutes*, chapter 103C.005, subdivision 4.

Added "conservation district technical representative" to replace the term "district technician". This allows the conservation district boards to seek assistance from technical experts not employed by the district. This is reasonable because the level of technical expertise needed to implement a practice may exceed the capabilities of the district staff.

Added "conservation practices" to clarify and simplify the previous term "soil and water conservation practices".

Replaced the term "enduring practice" with "effective life" to clarify that permanent practices are those designed for a specific time period.

Revised "high priority erosion problems" to allow districts to target program dollars to existing problems or problem areas identified in comprehensive local water plans or the SWCD's comprehensive plan. It deletes restrictions requiring minimum distances from a waterbody or a water course. This is reasonable because it allows districts to use resource planning processes already in place to target funds to areas most in need of treatment and removes restrictions that may or may not target funds local resource protection priorities.

Revised "high priority water quality problems" to allow districts to target program dollars to existing problems or problem areas identified in comprehensive local water plans or the SWCD's comprehensive plan. It deletes language specific to feedlot pollution along with restrictions requiring minimum distances from a waterbody or a water course. This is reasonable because it allows districts to use resource planning processes already in place to target funds to those areas most in need of treatment and removes restrictions that may or may not target funds to local resource protection priorities.

Revised "land occupier" to be consistent with the definition in M.S. 103C.101, subdivision 8.

Added "landowner" to clarify the difference between land occupier and landowner.

Added "other recognized technical practices" to provide the board and districts the opportunity to use new and innovative practices to treat erosion and water quality problems. While the approved practice list contains commonly used techniques to control erosion and protect water quality, it is unrealistic to assume the practices on the list can address all situations all of the time.

Revised "special projects" to clarify the intent of the project or program must be to accelerate the implementation of innovative projects or programs. Language citing specific examples and pertaining to secondary erosion problems was deleted to simplify the definition.

Revised "T" to be concurrent with the definition used in the Model Soil Loss Ordinance, developed by the BWSR for use by local units of government.

Added "technical approval authority" to define the process used to acknowledge and document the

technical expertise of the district's technical representative.

8400.00300 APPROVED PRACTICES

The revised language in subpart 1 notifies the reader that the Administrative Guidelines for the State Cost-Share Program contain the list of approved practices and deletes the rule reference. The requirement that the board consult districts when proposing changes to the policies regarding cost-sharing policies for practice components was added. Subpart 2 clarifies the criteria that the board will consider when approving a practice for state cost-share funds by:

- adding language that identifies water quality protection and improvement as an eligible primary purpose for the practice;
- adding language that defines how the practice's effective life is to be calculated;
- clarifying the language that denies funding for practices whose primary purpose is to increase land productivity; and
- adding language requiring that the approved practices be consistent with those identified in the district's comprehensive plan.

Subpart 3 was added to express the objectives the practices must meet to included on the approved practice list.

8400.0600 STATE BOARD ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS.

The revised title of this part clarifies that the subsequent narrative deals with the board's distribution of funds to districts.

Subpart 4 has been revised to clarify the requirement that districts must comply with the program rules and planning requirements to receive program grants from the board.

Subpart 5 allows the board to use the framework of the state cost-share program to implement grants received from sources other than the state. This is needed because the board periodically is selected to administer grant monies, such as funds from Minnesota Forestry Improvement Program. It is reasonable to use the procedures and policies of the state cost-share program where applicable.

8400.0900 CONSERVATION DISTRICT ADMINISTRATION OF PROGRAM FUNDS

Revising the title of this part clarifies that the subsequent narrative reviews how conservation districts administer the program funds once they have been appropriated to the district by the board.

Language added to subpart 1 requires that the conservation district use the funds for purposes designated by the state board. It is reasonable to add this statement because the board has the authority to increase the minimum 70 percent required be used to address high priority problems or decrease the maximum 20 percent allowed for technical and administrative services.

Language in subpart 2 is added to establish a maximum cost-share rate for the eligible costs associated with the installation of an approved conservation practice. This maximum also applies to cost-share funds contributed from other sources (i.e., the combined cost-share funds from all state and federal sources cannot exceed 75%). Setting the maximum limit at 75 percent is reasonable because it provides a one-quarter match to the program dollars without being onerous to the landowner. The wording "must not exceed 75 percent" is needed because future circumstances, such as cuts to the program's appropriation, may bring about the need to lower the rate. This subpart also permits districts to set rates lower than 75 percent, and clarifies what factors should be considered when setting the maximum rate. This is reasonable because it allows the district to manage the dollars appropriated to them by applying higher cost-share rates to practices or geographic regions identified as high priority during comprehensive natural resource planning efforts at the local level.

Subpart 3 is added to allow district's to re-encumber funds. It is reasonable to allow districts to re-encumber their appropriated dollars until the end of the grant period because it reduces the costs associated with returning and redistributing the unencumbered or slippage monies and does not penalize the district for unforeseen circumstances causing a project to cancel or cost less to construct. The board, through the appropriation language, has the authority to retain the funds until expended.

8400.1000 APPLICATION FOR FUNDS BY LAND OCCUPIERS

Revising the language clarifies that the application must be signed by the landowner and the land occupier when they are not the same individual. The deleted language pertaining to application deadlines is no longer relevant or, in the case of technical assessment and cost estimate, it is discussed elsewhere within rule.

8400.1100 GROUP PROJECT

Language is revised to clarify that the individuals involved in group projects need to designate one land occupier who will be responsible for acting on behalf of the whole group to ensure the practice gets installed expeditiously and efficiently. The new language also specifies that the district will issue one check to the principal land occupier, who will in turn distribute the cost-share funds according to a payment plan prepared by the group. This is reasonable because it not only simplifies the district's financial responsibilities, it facilitates the principal landowner's ability to implement the payment plan.

8400.1200 COOPERATIVE AND JOINT PROJECTS OF CONSERVATION DISTRICTS

Subpart 1 is revised to specify that administration of the cost-share application and contract be located in the district with the majority of project lands. This is needed because the prior language identified the district with the most land benefited administered the contract, which was subjective and difficult to definitively determine.

Subpart 2 is added to allow districts to pool their appropriated cost-share funds to install a practice. This

is needed because protecting and improving water quality in one district may require treating an erosion problem in the upper reaches of the watershed located in an adjacent district. It is reasonable to permit district to pool cost-share funds because it enables local resource managers to target conservation funds to high priority problems, regardless of political boundaries.

8400.1250 TECHNICAL ASSESSMENT AND COST ESTIMATE DETERMINATION

Much of the language added to this subpart has been moved from 8400.1000 and revised. This was done to put the discussion in the correct sequential order according to the chronological processing of a program application. The revised language requires that the technical assessment and cost-estimate phase of the application process be conducted by an individual possessing the appropriate level of technical approval authority, or other indicator of technical expertise such as an engineer's license. This requirement is needed to assure that the most appropriate practice will be chosen to treat the problem and the cost estimate is as accurate as possible. It is reasonable to insure that cost-share program dollars are expended on practices that have been evaluated by individuals possessing the appropriate technical knowledge and that accurate estimates are made to reduce costs of correcting deficiencies or re-encumbering returned funds.

8400.1300 CRITERIA FOR DISTRICT BOARD REVIEW

The items in this part identify the criteria that the district board must consider when reviewing the application. The language has been revised to:

- delete obsolete items, such as the requirement that the applicant be a district cooperator (removing this requirement is reasonable because districts no longer enter into this agreement with land occupiers);
- clarify that the approved practice listed in the BWSR's Administrative Guidelines for the State Cost-Share Program;
- correlate the primary purpose of the practice to the "high priority erosion and high priority water quality problem" terms explained in part 8400.0100;
- remove language pertaining to supplemental practices that are now incorporated into the approved practice list;
- provide documentation that the land occupier (and owner, if different) grant the district access to the parcel and they also acknowledge their responsibilities toward obtaining all permits required to complete the practice(s), maintaining the practice(s) and repairing damage to the practice(s) by signing the application; and
- clarify that an existing practice that has exceeded its effective life is eligible for cost-share assistance.

8400.1400 CONSERVATION DISTRICT APPROVAL

Language has been added to subpart one to clarify that once the application has been signed by the conservation district it authorizes the construction of the practice in accordance with the approved conservation practice plan. Added language emphasizes that construction prior to district signature makes the practice ineligible for financial aid and any changes to the contract must be reviewed and approved by the conservation district board. This is reasonable because the district board is responsible to make sure the cost-share funds are properly administered.

Subpart 2 is revised to present information in the correct chronological order regarding the district's processing of the application for cost-share funds. (The deleted language pertaining to high priority problems was discussed in the previous part - 8400.1300). The language added to this subpart addresses the technical requirements of the practice (moved from the previous part). It is reasonable to move the information pertaining to conservation practice plans to the approval phase because a conservation district will not want to develop plans until the cost-share application has been reviewed and approved by the district board. The language has also been updated to allow the use of practice standards other than those found only in Natural Resources Conservation Service's Field Office Technical Guide, provided they are certifiable by a registered professional engineer or they have been approved by the state board. This is reasonable because it provides the flexibility to install innovative practices yet retains an appropriate amount of oversight to insure that the standards are technically sound.

8400.1405 PROJECT DEADLINES AND PARTIAL PAYMENT

Subpart 1 is revised to change the required completion date to the end of the state's third fiscal year. This is needed to allow the BWSR to perform timely and consistent cost-share program close-outs for a specific grant period. It is reasonable as it still allows two full construction seasons to construct the practice and certify that it has been completed.

Subpart 2 has been revised to remove the requirement that a request for partial payment be approved by the board. The revisions to the language require that the conservation district board approve partial payment requests. This is reasonable because the district board is in the best position to determine that the project meets the requirements itemized in this subpart and the conditions itemized in subpart 3 and subpart 4.

8400.1460 RETURN OF ALLOCATED FUNDS

This part is added to clarify how the district board administers unencumbered funds. It requires that districts return any unencumbered funds that have expired to the board within 30 days after the grant period has ended. This requirement is reasonable because it removes the unavailable asset from the district's financial records. In addition, returning the funds allows the board to reallocate them for use by districts to treat other erosion and water quality problems.

8400.1500 CONSERVATION DISTRICT RECORDS

The requirement that the district document their efforts to identify and contact land occupiers with high priority erosion problems is added to this part to meet statutory requirements (M.S. 103C.501 Subdivision 6, item 6).

8400.1600 EXECUTING THE COST-SHARE CONTRACT

Language from subpart 4 regarding amending contracts is moved to subpart 1 and slightly revised to improve clarity. Subpart 2 is revised to acknowledge that supervision of the practice's construction can be carried out by the district technical representative with appropriate technical approval authority (TAA). This is reasonable because the process used to assign TAA adequately assesses and documents an individual's ability to insure (and certify) that a practice is installed according the standards and specifications indicated in the practice plan.

8400.1650 RECORDING PRACTICES

Adding language requiring the recording of practices over \$50,000 has its roots in an administrative board policy (in effect approximately from 1986-1990) requiring that districts record all cost-share practices on the land title. This policy was rescinded because it was onus to conservation districts in terms of workload and recording fees. It has been reinstated for practices where the state invests considerable funds to notify new landowners that the practice exists and must be maintained for its effective life. This is reasonable because it targets the safeguard only to costly practices and in doing so protects the state's investment.

8400.1700 MAINTENANCE

To increase the clarity of the information found in this part, the subparts have been created to organize the information according to specific subjects and the language simplified.

8400.1750 PRACTICE SITE INSPECTIONS

This part was added to require conservation districts to periodically monitor conservation practices installed with cost-share program dollars during their effective life. This is needed to make sure the state's investment remains on the land fulfilling its intended purpose for the effective life of the practice.

8400.1950; 8400.2000; 8400.2100; 8400.2200; 8400.2300; 8400.2400; 8400.2500; 8400.2600; 8400.2700; 8400.2705; and 8400.2800 Repealed.

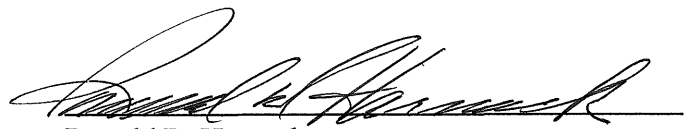
Repealing these parts identifying the practices approved for cost-share assistance, along with conveying the purpose and policies associated with the practices, is needed to allow the board and conservation districts to stay current with the latest technology being developed to treat erosion and water quality

problems. Relocating this information in the Administrative Guidelines for the State Cost-Share Program is reasonable because as 8400.0300 subpart requires, conservation districts will be consulted when the board makes changes to the approved practices list or the associated cost-share policies.

Conclusion

Based on the foregoing, the Minnesota Board of Water and Soil Resources' proposed amendments to the permanent rules are both necessary and reasonable.

10/6/95
Date


Ronald D. Harnack
Executive Director