



Minnesota Excessive Soil Loss Program Implementation

DRAFT Interim Guidance: Excessive Soil Loss Complaints for Agricultural Activities

April 4, 2016

Overview

The Minnesota Board of Water and Soil Resources (BWSR) is requesting public comment and information on the development of orders, guidance and procedures to support the implementation of the Minnesota Excessive Soil Loss Program (Minnesota Statutes 103F.401 to 103F.455).

Minnesota's soil erosion law, enacted in 1984, states that a person may not cause excessive soil loss. The law encouraged local governments to adopt soil erosion ordinances and could not be implemented without one. In 2015, changes were made to the soil erosion law that broadened its applicability.

Under the revised law, implementation moves from a county ordinance approach to a complaint-based process. BWSR will be considering interim guidance to implement these changes, and plans to initiate the process to amend Minnesota Rules 8400.4000 through 8400.4080 in the next several months.

Interim Guidance

The following procedural steps are guided by M.S. 103F.401 – 103F.455 (Soil Erosion Law), together with the companion Minnesota Rules (M.R.) Parts 8400.4000 through 8400.4080 (Excessive Soil Loss Control).

Procedural Steps for Complaints Associated with Agricultural Activities:

Step 1 - County (or soil and water conservation district (SWCD), if a designated agent of the county) receives written complaint which complies with part 8400.4040, subpart 1. Complaints are confidential data and are not public information.

- a. The law allows a county to designate the SWCD as its agent for carrying out administrative and mediation duties (103F.401, subd. 8., 8400.4002, subpart 13. & 103F.405, subd. 2.). This is an option for counties that do not want to administer the law directly. M.S. section 103C.331, subd. 19 provides SWCDs authority to accept delegation from a county to administer soil and water conservation-related official controls. If delegated, then the SWCD could be the recipient of the complaint.

Step 2 - County forwards complaint to SWCD to initiate investigation and report (8400.4040, subparts 2. & 3.)

- b. The SWCD starts a confidential file documenting correspondence and records relating to the complaint filed.
- c. SWCD contacts BWSR Board Conservationist for assistance.
- d. SWCD notifies landowner of complaint and provides opportunity for landowner to be at a site visit (8400.4040, subpart 2.).
- e. SWCD makes a site visit to investigate evidence of excessive erosion and/or sedimentation. (Permitted soil loss and sedimentation limits are defined in 8400.4025, subparts 1. & 2.)

- f. SWCD conducts an investigation in accordance with M.S. 103F.421, subd. 2. and M.R. 8400.4040, subpart 3. to evaluate and **prepare a written report that includes:**
 - i. Presence of rill and/or gully erosion
 - ii. Extent of adverse impacts from sedimentation
 - iii. Average rate of soil loss from water or wind erosion in tons per acre per year
 - iv. If excessive soil loss is determined, **a conservation plan with applicable BMPs to prevent excessive soil loss or reduce the soil loss to the most practicable extent**
 - v. A summary of the findings, and a conservation plan with one or more options, as applicable

Step 3 - SWCD submits report to County and BWSR. If the report documents that excessive soil loss is not occurring, the county, or SWCD as its designated agent, dismisses the complaint.

Step 4 - If the report documents excessive soil loss, written notice, by the county, must be given to landowner, in accordance with part 8400.4040, subpart 4.

Step 5 - If the report documents excessive soil loss, then the county can choose one of the following two paths to proceed with reaching agreement on a conservation plan and timeframe for completion of corrective actions and enforcement.



County adopts local Administrative Penalty Order Plan	Request SWCD/BWSR to proceed under BWSR Administrative Penalty Order Plan
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<p>SWCD offers technical assistance and State Cost-Share is offered for financial assistance. The SWCD and landowner are encouraged to seek additional funding, if needed, through other applicable state, federal or local programs.</p> <p>The landowner has 90 days after the complaint is substantiated to apply for State Cost-Share program assistance or the cost-share is reduced to 50 percent, unless the SWCD or the board approves an extension. An extension must be granted if funds are not available. (M.S. 103E.421, subd. 4.)</p> <p>If the landowner does not agree with SWCD findings of excessive soil loss and an associated conservation plan, the County requests the landowner to participate in a mediation process with the county, in accordance with M.S. 103F.421, subd. 3.</p> <p>When State Cost-Share program funds are available and the landowner does not comply with the mediated agreement/conservation plan</p>	<p>SWCD offers technical assistance and State Cost-Share is offered for financial assistance. The SWCD and landowner are encouraged to seek additional funding, if needed, through other applicable state, federal or local programs.</p> <p>The landowner has 90 days after the complaint is substantiated to apply for State Cost-Share program assistance or the cost-share is reduced to 50 percent, unless the SWCD or the board approves an extension. An extension must be granted if funds are not available. (M.S. 103E.421, subd. 4.)</p> <p>If the landowner does not agree with SWCD findings of excessive soil loss and an associated conservation plan, the SWCD requests the landowner to participate in a mediation process as defined in the BWSR APO plan.</p> <p>When State Cost-Share program funds are available and the landowner does not comply with the conservation plan and recommended</p>
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<p>and recommended BMPs, the landowner may be subject to a County APO plan and penalty up to \$500.</p> <p>If the landowner refuses to participate in mediation or the landowner and local government do not agree to a mediated settlement, the local government forwards the complaint to the county attorney. The county attorney may dismiss the complaint or petition for a district court hearing under M.S. 103F.425.</p>	<p>BMPs, the landowner may be subject to a BWSR APO plan and penalty up to \$500.</p> <p>Administrative penalties may be appealed in accordance with section 116.072, as indicated in section 103B.101, subd. 12.</p>
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Step 6 - SWCD certifies BMP installation or conservation plan completion, as applicable.

Implementation Timeline

BWSR's implementation timeline for the development of the orders, guidance, procedures and rules to support the implementation of the Excessive Soil Loss Program:

<u>March 23, 2016</u>	BWSR Board Review Interim Guidance and Authorize Request for Information
<u>May 25, 2016</u>	BWSR Board Approve Interim Guidance and Authorize Rulemaking
<u>Summer/Fall 2016</u>	Commencement of Rule Amendment Process

Specific Questions

While all comments relating to Excessive Soil Loss Program implementation are welcome and encouraged, BWSR is specifically requesting comment on the following questions:

Question 1: what models or enforcement structures that should be evaluated and considered for the Excessive Soil Loss Law?

Question 2: Will the guidance presented below effectively address any circumstances of excessive soil loss?

Question 3: What potential problems might the proposal discussed here present to BWSR, local governments and landowners, and what actions should be considered to address these problems?

Question 4: What other options, considerations and proposals should be evaluated in developing an effective means to implement the changes to the Excessive Soil Loss Statute?

Public Comment

Information and comments will be accepted until 4:30 p.m. on May 4, 2016. Comments may be submitted via email to buffers.bwsr@state.mn.us or by U.S. mail to:

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