

LOWER LOUP NATURAL RESOURCES DISTRICT RULES AND REGULATIONS FOR IMPLEMENTING EROSION AND SEDIMENT CONTROL ACT

I. AUTHORITY

These rules and regulations are adopted pursuant to the authority granted in Section 2-4605, R.R.S. 1948, as amended.

II. PURPOSE

The purpose of these rules and regulations is to provide an orderly method for implementing the Erosion and Sediment Control Act, sections 2-4601 et. seq. R.R.S. 1943, as amended to provide for the conservation and preservation of the land, water and other resources of the District, and to thereby:

- A. Reduce damages caused from wind erosion;
- B. Reduce storm water runoff and the danger of flooding;
- C. Reduce sediment damage to lands within the District;
- D. Reduce non-point pollution from sedimentation and related pollutants;
- E. Preserve the value of land and its productive capability for present and future generations; and
- F. Safeguard the health, safety and welfare of the District's citizens.

III. APPLICABILITY

These rules and regulations apply to all lands within the District except to those lands which lie within the respective jurisdiction of a county or municipality which has adopted and is implementing erosion and sediment control regulations in substantial conformance with the state erosion and sediment control program. Some non-agricultural land-disturbing activities are also excluded and are identified in Rule 4, Section J, sub-sections (2), (3), (4) and (5).

IV. DEFINITIONS

- A. **Alleged violator** means the owner of record and the operator, if any, of land which is the subject of a complaint filed in accordance with Rule 8.
- B. **Board** means the Board of Directors of the Lower Loup Natural Resources District.
- C. **Compliance officer** means the General Manager or designee that is a representative of the Lower Loup Natural Resources District to implement the rules of the District.
- D. **Conservation agreement** means an agreement between the owner and operator, if any, of a farm unit and the District in which the owner and operator, if any, agrees to implement all or a portion of a farm unit conservation plan or erosion and sediment control plan. The agreement shall include a schedule for implementation and may be conditioned on the District or other public entity furnishing technical, planning or financial assistance in the establishment of the soil and water conservation or erosion and sediment control practices necessary to implement the plan or portion of the plan.
- E. **District** means the Lower Loup Natural Resources District.

- F. **Excess erosion** means the occurrence of erosion in excess of the applicable soil-loss tolerance level which causes or contributes to an accumulation of sediment upon the lands of any other person to the detriment or damage of such other person.
- G. **Farm unit conservation plan** means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the District. Such plan shall be based on the determined conservation needs of the farm unit and identification of practices which may be expected to prevent soil loss by erosion to the applicable soil-loss tolerance level. The plan may also, if practicable, identify alternative practices by which such objective may be attained.
- H. **Erosion and Sediment Control Plan** means a plan, developed for a parcel of land used for non-agricultural purposes, which identifies the permanent or temporary practices which may be expected to either prevent sediment from leaving that parcel or prevent soil loss / erosion from that parcel in excess of the applicable soil-loss tolerance level.
- I. **Inspector** means a representative of the District that conducts inspections and represents the Lower Loup Natural Resources District.
- J. **Non-agricultural land-disturbing activity** means a land change including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state, but shall not include:
1. Activities related directly to the production of agricultural, horticultural or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;
 2. Installation of aboveground public utility lines and connections, fence posts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;
 3. Emergency work to protect life or property; and
 4. Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size; and
 5. Activities related to the operation, construction, or maintenance of industrial or commercial public power district or public power and irrigation district facilities or sites when such activity is conducted pursuant to state or federal law or is part of the operational plan for such facility or site.
- K. **Sediment damage** means:
1. The economic or physical damage to the land or other property of one person resulting from the deposition of sediment, by water or wind, or soil eroded from the lands of another person;
 2. The degradation of water quality and/or the reduced beneficial use of the water in the stream or lake involved resulting from soil sedimentation or the deposition of chemical laden sediments. For the purpose of this program, chemicals shall include, but is not limited to, any agricultural, municipal, or industrial chemicals or waste deposited on the soil.

Physical effects to land or property which are relatively short term in nature and

which cause no economic damage and no lasting physical damage shall not constitute sediment damage for the purpose of these rules and regulations.

- L. **Soil-loss tolerance level** means the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act. Soil loss from water erosion may include:
 - 1. Sheet and rill erosion which includes relatively uniform soil loss across the entire field slope which may leave small channels located at regular intervals across the slope; and
 - 2. Ephemeral gully erosion which occurs in well-defined depressions or natural drainage ways where concentrated overland flow results in the convergence of rills forming deeper and wider channels.
- M. **T value** means the average annual tons per acre soil loss that a given soil may experience and still maintain its productivity over an extended period of time.

V. SOIL-LOSS TOLERANCE LEVEL

USDA Soil Survey data provides values of soil loss tolerance (T) for various soil series across the District and are described as Soil-Loss Tolerance Levels in the NRCS TECHNICAL GUIDES. These soil-loss tolerance levels for the soils of the District have been adopted by the Board and are attached hereto as Appendix I. Each soil series listed may contain one or more soil mapping units-referred to in Rule 10. The permitted soil-loss tolerance levels for particular lands may not exceed the T value noted in Appendix I.

VI. ADMINISTRATION

- A. The Board delegates the responsibility for administering these rules and regulations to the District manager except to the extent Board action is specifically required by these rules and regulations or by law. The following duties shall be performed by or under the direction of the District manager.
 - 1. Keep an accurate record of all complaints received, investigations made, and other official actions.
 - 2. Investigate all complaints made in writing to the District office relating to the application of these rules and regulations.
 - 3. Monitor compliance with all approved farm unit conservation plans, erosion and sediment control plans, and administrative orders issued by the Board.
- B. Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, and after a written and signed complaint has been made, the compliance officer and inspector shall have the following powers and responsibilities:
 - 1. At any reasonable time, after notice to the owner and operator, if any, to enter upon any public or private lands within the area affected by these rules and regulations for the purpose of investigating complaints and to make inspections to determine compliance. The owner, operator, if any, and any other necessary technical personnel and representatives of the District may accompany the inspector.
 - 2. Upon reasonable cause, to report to the Board any violations of any administrative order issued by the Board pursuant to Section 2-4608, R.R.S. 1943, as amended,

- and these rules and regulations,
3. At the direction of the Board, and in accordance with Rule 13 (e) and 18, to commence any legal proceedings necessary to enforce these rules and regulations and any order issued pursuant to them.

VII. VIOLATION

A violation of these rules and regulations exists if:

- A. Sediment damage is occurring;
- B. Average annual soil losses on the land which is the source of that sediment are exceeding the soil-loss tolerance level adopted in Rule 5;
- C. The activity causing the soil loss is not an exempted non-agricultural land-disturbing activity Rule 4, Section J, sub-sections (2) to (5); and
- D. The land which is the source of the damage is not in strict compliance with a conservation agreement approved by the District.

VIII. COMPLAINT

A complaint alleging that soil erosion is occurring in excess of the soil loss tolerance level or that sediment damage is occurring may be filed in the District office by:

- A. Any owner or operator of land damaged by sediment,
 - B. Any authorized representative of a state agency or political subdivision whose roads or other public facilities are being damaged by sediment,
 - C. Any authorized representative of a state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or
 - D. Any District staff member, or other person authorized by the Board to file complaints.
- Complaints shall be made in writing and signed on a form provided by the director.

IX. INVESTIGATION OF COMPLAINT

Upon receipt of a properly filed complaint, a representative of the District shall notify the alleged violator within 10 days, excluding holidays and weekends, that a complaint has been filed and that an investigation will be initiated to determine whether a violation of these rules and regulations has occurred. The investigation shall take place as soon as possible after the complaint has been filed and notice given. The alleged violator shall be given an opportunity to accompany the person conducting the investigation.

If a farm unit conservation plan or erosion and sediment control plan previously approved by the District is being implemented and maintained in strict conformance with a conservation agreement including the land subject to the complaint, the complaint shall be dismissed. The alleged violator, complainant, and Board shall be notified.

Upon completion of the investigation, the investigator shall file a report of his or her findings and shall provide copies to the alleged violator and the complainant. The report shall include:

- A. The location and estimated acreage involved in the alleged violation;
- B. The investigator's conclusions concerning the existence of any sediment damage and a description of the location and nature of any sediment damage identified; and

C. The location of land(s) which the investigator concludes are the source of the sediment, the nature of the land use on such lands, and the estimated average annual soil losses from such land(s).

The investigator may utilize the services of professional staff, consultants, or technicians of other state or federal agencies, if necessary.

X. DETERMINATION OF SOIL LOSS

Soil losses shall be determined by using the applicable portions of the then current version of the United States Department of Agriculture, Natural Resources Conservation Service Field Office Technical Guide to estimate the average annual sheet and rill erosion, ephemeral erosion or wind erosion.

The soil losses normally will be calculated on a soil survey mapping unit basis. If it is determined that soil loss in excess of the applicable soil loss tolerance level is occurring in the portion of one or more mapping units under the ownership and control of the alleged violator, they may not be averaged with other non-violating units for the purpose of determining overall soil loss.

If it is determined that the sediment damage complained of is resulting from erosion from a land parcel smaller than the soil mapping unit, the soil loss equation in the Field Office Tech.

Guide may be applied to such smaller portion only if such portion is two acres or greater.

The cover and crop management factor, "C", used in calculating erosion may incorporate a cropping history of up to five years. Crop rotation patterns longer than five years but not more than ten years may be used for the purpose of planning future compliance with soil loss tolerance levels but exceeding the limits may not be planned for more than two consecutive years. Soil losses from irrigation and gully erosion may also be determined by using acceptable scientific procedures and may, if deemed appropriate by the Board, be added to soil losses for sheet and rill, ephemeral and wind erosion. Soil losses from streambank erosion shall not be calculated and these rules and regulations are not applicable to this type of erosion. Application of the soil loss equation formulas will be made by someone whose qualifications to make such determinations can be supported in court.

XI. BOARD ACTION

The Compliance Officer shall make determinations as to whether a probable violation of these rules and regulations has or has not occurred. Such determination shall be based upon the inspectors report completed pursuant to Rule 9 and an on-site inspection by the inspector, if warranted. The inspector shall report its findings to the compliance officer, the alleged violator and the complainant with a recommendation of further action as follows:

A. If the compliance officer determines that no violation of these rules and regulations has occurred, the compliance officer may approve dismissal of the complaint. The complainant shall be given the opportunity to appear before the entire Board.

B. If the compliance officer determines that a farm unit conservation plan or erosion and

- sediment control plan previously approved by the District is being implemented and maintained in strict conformance with a conservation agreement including the land subject to the complaint, it may approve dismissal of the complaint.
- C. If the compliance officer determines that a probable violation of these rules and regulations has occurred, it shall proceed in accordance with Rule 12.

XII. NOTICE OF VIOLATION

If the compliance officer determines that a probable violation of these rules and regulations has occurred, the alleged violator shall be informed of its findings by letter delivered in person or sent by certified return receipt mail. The letter shall specify the options available to the alleged violator, including:

- A. The alleged violator shall be given an opportunity to contact the District within 10 days, excluding holidays and weekends, after receipt of notice concerning the development of a plan and schedule for eliminating excess erosion and sedimentation from the land that generated the complaint. If appropriate at this time, alternative practices for inclusion in a plan may be suggested. Information on cost-share programs and an indication of whether cost-share money is available may also be supplied.
- B. The alleged violator shall be given an opportunity to contest the compliance officers findings at a regularly scheduled Board meeting or, if desired, a Board hearing to be held no sooner than 15 days, excluding holidays and weekends, after receipt of notice. Notice of the date shall be given. The alleged violator may request a formal public hearing within 10 days, excluding holidays and weekends, of receipt of notice. The District's rules for formal adjudicatory hearings shall govern the conduct of all such hearings.
- C. The alleged violator shall be further notified that if he or she does not respond to the notice and does not appear at the Board meeting for which notice was given, the Board shall proceed in accordance with Rule 15 in his or her absence to make a final determination on the complaint and issue an administrative order if the Board concludes that a violation has occurred.

XIII. DEVELOPMENT AND APPROVAL OF PLAN FOR COMPLIANCE

- A. If the alleged violator contacts the District pursuant to Rule 12 (a) and indicates a desire to jointly develop either a farm unit conservation plan or an erosion and sediment control plan for eliminating excess erosion on or sedimentation from the land that generated the complaint, compliance officer action on the complaint shall be delayed until further action is taken by the inspector pursuant to (b) or (d) of this Rule. The inspector and the alleged violator shall promptly secure the assistance of the Natural Resources Conservation Service (NRCS) or such other professional resource planners as are deemed necessary to assist in preparation of such a plan and shall attempt to prepare a mutually acceptable plan in accordance with the NRCS Field Office Technical Guide. Any plan developed in accordance with this section shall identify, as applicable, the soil and water conservation practice(s) or erosion and sediment control practice(s) to be applied or utilized and shall be accompanied by a proposed conservation agreement setting forth a schedule for compliance.
- B. Any plan developed by the alleged violator and the inspector shall be presented to the

- compliance officer. If the compliance officer agrees to the proposed plan and to the accompanying conservation agreement, the compliance officer may thereafter approve such plan and agreement. The complainant shall be notified of such action. In considering the schedule for compliance contained within the conservation agreement, the compliance officer may approve a longer time for compliance than would be permissible if an order were issued pursuant to Rule 15, but shall not do so without consideration of the nature and extent of any additional sediment damages the complainant is likely to suffer until the plan has been fully implemented.
- C. Strict conformance with a plan and agreement approved pursuant to this Rule shall be deemed compliance with these rules and regulations for the lands which are subject to the agreement.
 - D. If no mutually acceptable plan and conservation agreement have been prepared by the alleged violator and the inspector within an acceptable time period or if the inspector concludes at any time that progress is not being made and is no longer likely on preparation of such a plan, the complaint shall be again referred to the compliance officer and the alleged violator shall be so notified in person or by certified return receipt mail and shall be given the information and option described in Rule 12(b). For purposes of this rule, acceptable time period shall mean (1) 90 days, excluding holidays and weekends, for alleged violations involving agricultural, horticultural, or silvicultural activities and (2) 15 days, excluding holidays and weekends, for alleged violations involving a non-agricultural land-disturbing activity.
 - E. Following refusal of a landowner to discontinuing an activity causing erosion which constitutes a violation in Rule 7, and to establish a plan and schedule for eliminating excess erosion pursuant to these rules, and if the immediate discontinuance of such activity is necessary to reduce or eliminate damage to neighboring property, the District may petition the District court for an order to the owner and, if appropriate, the operator, to immediately cease and desist such activity until excess erosion can be brought into conformance with the soil-loss tolerance level or sediment resulting from excess erosion is prevented from leaving the property.

XIV. PRACTICES

Practices designed to reduce or control soil erosion and/or sediment damage may be approved in developing a plan under Rule 13 and may be required by the District in an administrative order pursuant to Rule 15.

- A. Soil and water conservation practices, applicable only to land used for agricultural, horticultural, or silvicultural purposes may include:
 - 1. Permanent practices, such as the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, grade control structures, tile outlets, and other practices approved by the District.
 - 2. Temporary soil and water conservation practices, such as the planting of annual or biennial crops, use of strip-cropping, contour planting, conservation tillage or residue management system, and other cultural practices approved by the District.

The District shall maintain a complete list of approved permanent and temporary soil and water conservation practices as part of its local erosion and sediment control program.

- B. Erosion and sediment control practices, which are applicable to activities other than agricultural, horticultural, or silvicultural activities, may include:
1. The construction or installation and maintenance of permanent structures or devices necessary to carry to a suitable outlet away from any building site, any commercial or industrial development or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss tolerance level and which does not carry or constitute sewage or industrial or other waste to a suitable outlet away from any development or facility not served by a central storm sewer system;
 2. The use of temporary devices or structures, temporary seeding, mulching (including fiber mats, plastic, straw), diversions, silt fences, sediment traps or other measures adequate either to prevent erosion in excess of the applicable soil loss tolerable levels or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any non-agricultural land-disturbing activity; or
 3. The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion on the right-of-way in excess of the applicable soil-loss tolerance level.

The District shall maintain a complete list of approved erosion and sediment control practices as part of its local erosion and sediment control program.

XV. ORDER

If, after Board consideration of the complaint at a meeting or hearing for which the alleged violator has been given notice in accordance with Rule 12, the Board finds that sediment damage has occurred, that average annual erosion on the land which is the source of the damage is occurring in excess of the applicable soil-loss tolerance level(s), and that a conservation plan or erosion and sediment control plan has not been developed nor is being implemented according to a conservation agreement, it shall issue an administrative order to the violator stating:

- A. The date of the order.
- B. The identity of the source of the violation and its location.
- C. The authority of the Board to issue such order.
- D. The specific findings, including:
 1. The estimated average annual soil loss and the extent to which erosion exceeds the the applicable soil-loss tolerance level; and
 2. The nature of the sediment damage or water quality impairment resulting from such excessive erosion.
- E. If desired by the Board, the alternative soil and water conservation practices or erosion and sediment control practices required to bring the land into conformance with these rules and regulations. When the erosion is the result of agricultural, horticultural, or silvicultural activities, the soil and water conservation practices required shall be those necessary to bring the land into conformance with the applicable soil-loss

- tolerance level. Where the erosion complained of is the result of a non-agricultural land-disturbing activity, the Board may authorize the violator to either bring the land into conformance with applicable soil loss tolerance level or to prevent sediment resulting from excessive erosion from leaving the land.
- F. Any requirements concerning the operation, utilization, or maintenance of the alternative practices identified.
 - G. The deadlines for commencing and completing work necessary to comply with this order.
 - 1. The time for initiating work needed to establish the necessary soil and water conservation practices or permanent erosion and sediment control practices shall not exceed six months after service or mailing of the order to the violator and shall be completed no later than one year after service or mailing of the order to the violator unless an extension has been granted upon a showing of good cause.
 - 2. A reasonable time for initiating work for establishing necessary erosion and sediment control practices for nonagricultural land-distributing activities and the time within which the work shall be satisfactorily completed which shall be no longer than 45 days, excluding holidays and weekends, after service or mailing unless an extension has been granted upon a showing of good cause. An extension shall only be granted after review and affirmative action of the Board.
 - H. The action to be taken by the Board if the violator does not comply.

A copy of the dismissal or administrative order shall be delivered to the owner and to the operator, if any, of the land in question by personal service or certified or registered mail.

XVI. COST-SHARE ASSISTANCE

To prevent excess erosion and sediment from leaving the land due to any agricultural or nonagricultural land-disturbing activity, cost-share assistance may be available from the District. Such assistance, if available, may be used for any erosion or sediment control practice. The lack of available cost-sharing assistance does not offset the requirement that the owner and, if appropriate, the operator of such land comply with the terms of an approved plan of compliance or an administrative order.

XVII. SUPPLEMENTAL ORDERS

The Board may issue supplemental orders, as necessary, to extend the time of compliance with an administrative order if, in its judgment, the failure to commence or complete work as required by the administrative order is due to factors beyond the control of the

person to whom the order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time.

XVIII. NON-COMPLIANCE

Subject to any limitations imposed by the Board, the District manager may cause the District to commence legal proceedings by filing a petition in the name of the District in the District court in which a majority of the land is located requesting a court order requiring immediate compliance with the administrative order or any supplemental order issued previously, if he or she has reasonable cause to believe after inspection that

an administrative order issued previously by the Board is not being complied with because:

1. The work necessary to comply with the order is not commenced on or before the date specified in the order or in any supplemental orders;
2. The work is not being performed with due diligence, is not satisfactorily completed by the date specified in the order, or is not being operated, utilized, or maintained in accordance with requirements set forth in the order;
3. The work is not of a type or quantity specified by the District, and when completed, it will not or does not reduce soil loss to within the applicable soil-loss tolerance level for the identified land or, in the case of non-agricultural land-disturbing activity, will not or does not prevent sediment resulting from excessive erosion from leaving the land involved; or
4. The person to whom the order is directed informs the District that he or she does not intend to comply.