

Soil & Water Conservation District Policies and Procedures Manual

Division of Soil Conservation and Water Quality-Iowa Department of Agriculture and Land Stewardship

SOIL LOSS REGULATIONS (SLR)

Iowa Sediment Control Law (09/18)

The Iowa Sediment Control Law is referenced in the Iowa Code, Chapter 161A.44 through 161A.61, (**Refer to Legislation (LEG) – Iowa Code – 161A Soil and Water Conservation**) and the Iowa Financial Incentive Program for Soil Erosion Control, 27—10.41(3), 10.54, and 10.60(4), (**Refer to Budget & Finance (B & F) - Iowa Financial Incentive Program (IFIP) Cost Share - Iowa Administrative Code-Agriculture and Land Stewardship Department [21] - Soil Conservation and Water Quality Division [27] – Chapter 10**).

The following instructions are designed to assist soil and water conservation district commissioners when they receive a complaint letter under the Iowa Sediment Control Law. The instructions also are to be used if commissioners inspect land subject to public interest that they feel is being damaged by sediment. A flow chart has been developed to assist commissioners in processing agricultural soil loss complaints.

Agricultural Lands

Erosion Problem

A soil and water conservation district may receive verbal or written notification that a problem exists where erosion from one property is resulting in sediment damage to another property. The first course of action would be to discuss the mutual erosion problem. If the problem cannot be addressed by informal discussion, the party alleging damage must submit a formal complaint.

The Complaint

The complaint is the catalyst which triggers the use of the Iowa Sediment Control Law (Iowa Code Section 161A.47 through 161A.61). The complaint must be in letter form, stating that excessive erosion is occurring upon the alleged offending party's land and that sediment damage is occurring, (**GO TO: FORMS/SLR/Soil Loss Complaint Letter**). The letter should describe the property being damaged and be signed by the titleholder of record or by the person actually living on or working the property, such as a tenant. State or county agencies may also file a complaint if they have control of the land being damaged.

An examination of the county real estate records, which may be found at the recorder's office in the county courthouse in which the land lies, should be made to determine if the complaining party is the true owner of the land being damaged. Otherwise, an actual physical inspection of the property should be made to insure the complaining party is an occupant of the land.

The Investigation of the Complaint

After a complaint has been properly filed, a quorum of the soil and water conservation district commissioners, the respective IDALS-DSCWQ Field Representative, together with technical staff,

should meet with the complainant to consider the facts and circumstances surrounding the complaint. The commissioners will make an inspection of the land of the complainant to ascertain if sediment damages are occurring upon the property. The investigation and inspection should occur in a timely manner after receipt of the complaint. All damage to the complainant's premises that has resulted from the soil erosion on adjacent property should be noted. Make documentation of the damage incurred through the use of photographs, written statements, and descriptions.

- If no damage is evident, the district commissioners must reply to the complainant in writing to convey this information.
- If damage is evident, each district commissioner should complete a written statement describing the extent of the damage.

If damage was evident, the commissioners should write a letter to the Natural Resources Conservation Service (NRCS) District Conservationist requesting technical assistance for the complaint, and a copy of this letter should be sent to the NRCS Assistant State Conservationist for Field Operations.

The property of the party against whom the complaint is filed will need to be inspected. Iowa Code Section 161A.51 gives commissioners the legal right to enter upon private or public property at any reasonable time to determine whether soil erosion is occurring on the property in violation of the district's regulations. First, obtain the consent of both the owner and the occupant of the land before the inspection is made. A notice of entry letter should be sent by certified mail to the owner and the occupant of the land before an inspection is made, (**GO TO: FORMS/SLR/Notice of Entry**). The letter must state that a soil loss complaint has been filed with the district and that the commissioners would like to inspect the property. This should include the whole drainage area that drains onto plaintiff property. Include a description of the property for which the complaint has been filed along with the time, day, month, and year the inspection will be made. The landowner and the occupant must have at least ten (10) days notice before the inspection.

- If permission is granted, the commissioners may proceed with the inspection.
- If one of the parties (the owner or the occupant) withholds their consent, the inspection may still be made. If the owner or the occupant of any property refuses admittance, or if prior to such refusal the commissioners demonstrate the need for a warrant, the commissioners may make an application for a search warrant to the district court of the county in which the property is located. Contact your field representative for more information on acquiring a search warrant.

From the inspection of the alleged offending party's land, determine specifically if soil erosion is occurring thereon in excess of the limits established by the district's soil loss limit regulations. Form SL-1, Record of Rates of Erosion Computations should be filled out by the District Conservationist, (**GO TO: FORMS/SLR/Record of Rates of Erosion Computations**). District commissioners should be familiar with the Revised Universal Soil Loss Equation (RUSLE2) and how the SL-1 is filled out.

- If the findings of this investigation indicate that the excessive erosion is not occurring, the commissioners should send a letter to the complainant advising of these findings.
- If the findings of this investigation indicate that the complainant has sustained sediment damage upon their property originating from excessive soil erosion occurring upon the alleged offending party's land, Table II of Form SL-1 should be completed to list two or more alternative land treatment measures needed.

If the district's soil loss limits have been exceeded, it is recommended that the commissioners meet with the landowner to discuss the rates of erosion occurring and the alternatives to control erosion. Persons with a vested interest in the property (each landowner of record, titleholder of record, and occupant of the land, etc.) should also be sent copies of all correspondence. An examination of the real estate records at the county courthouse will reveal the titleholder of record. If in question, check with the Attorney General's office through the Division of Soil Conservation and Water Quality.

- In many cases, the commissioners and the landowner can reach a voluntary agreement. The landowner will be eligible for routine technical and cost-share assistance.
- If a voluntary agreement cannot be reached, the next step is to issue an administrative order.
- Prior to the issuance of an administrative order, the complaint may be withdrawn or modified at the discretion of the complaining party. After the administrative order is served, the complaining party may no longer change their complaint.

The Administrative Order

If an administrative order needs to be issued, the district will notify the offending parties that soil erosion is occurring on their property in excess of limits specified in the district's regulations, (**GO TO: FORMS/SLR/Administrative Order**). It also informs the offending party their violations will not be tolerated and that they must eliminate the excess erosion within the time limits stated in the administrative order. The order must contain a specific legal description of the offending party's property where the soil erosion is taking place. The legal description may be obtained from land records on file in the county courthouse. In addition, the order should state the extent to which soil erosion thereon exceeds the limits established by the district's regulations. A directive commanding the offending party to eliminate the soil erosion within an appropriate period should also be included. Commencement of the improvements is required within six months and completion should be allowed no later than one year after the service or mailing of the order. The six-month starting period is the maximum time allowed. If cost-sharing will be involved, it is recommended that a shorter period of time be allowed. Depending on the time of year, a 30-day period is recommended.

The initial draft of the administrative order should be completed and forwarded to the Division of Soil Conservation and Water Quality for Attorney General review. It should not be issued until this review has been completed.

An administrative order is directed to and served separately upon each landowner of record. A copy of the administrative order should be served upon the titleholder of record and the occupant of the land, if different from the landowner. If a contract seller is involved, a paragraph should be added to the administrative order. There are two ways in which an administrative order may be delivered to the offending party/parties: 1) personally served upon the by the sheriff, or 2) sent by restricted certified mail. Attach Form SL-1, maps and erosion control alternatives to the administrative order sent to all parties. The district should retain adequate records to document the information delivered and the method of delivery.

The administrative order must be recorded at the county recorder's office in the county where the offending party's land is located.

The Supplementary Administrative Order

An owner or occupant of land in this state is not required to establish any new permanent or temporary soil and water conservation practices unless 50 percent public cost-sharing funds are available. The amount of cost-sharing funds made available shall not exceed 50 percent of the estimated cost of a permanent practice as established by the district commissioners. Commissioners shall establish the estimated cost of permanent practices in the district based upon one and two-tenths of the average cost of the practices installed in the district during the previous year. The average costs shall be reviewed and approved by the commissioners each calendar year.

Also, the district may not require a landowner to incur a cost to establish practices in any one calendar year which exceeds \$10.00 per acre for each acre of land belonging to that owner and located in the county containing the land on which the required practice is being established or in counties contiguous thereto.

Soil and water conservation district commissioners may require persons under administrative order to submit up to three bids for the work required and to provide an explanation to the commissioners if a bid other than the lowest bid has been selected by that person.

Once an alternative has been selected and estimate completed for the administrative order, the district secretary should contact the Division. The Division will deposit mandatory funds in the district's cost share FARMS account. (Note on the Practice Details page and the Expense page that this is a Mandatory Soil Loss Complaint.)

After final approval, the commissioners must issue to the same parties who receive the original administrative order a supplementary order to be delivered in the same manner as the administrative order, (**GO TO: FORMS/SLR/Supplementary Administrative Order**). The supplementary order shall state a date, not more than six months after approval of the application for public cost-sharing funds, when the work needed to comply with the original administrative order must actually be commenced, and a time not more than one year thereafter when such work is to be satisfactorily completed. The time provisions of the supplementary order supersede the time provisions contained in the administrative order.

The landowner will be required to sign a maintenance agreement prior to receipt of cost-share payment, (**GO TO: FORMS/B & F/FARMS Maintenance/Performance Agreement**).

The supplementary order, board approval letter and maintenance/performance agreement shall be recorded in the county recorder's office in the county where the offending party's land is located.

Noncompliance with Orders

If the offending party/parties do not commence or complete the required improvement in a timely manner, or do not conduct themselves with due diligence in the aforementioned activities, they are not in compliance with the administrative (supplementary) order.

- The district may never formally grant a time extension for compliance with the order. However, the district can temporarily postpone enforcement of the order when the failure to

comply is due to factors beyond the control of the persons to whom the order was directed and those persons can be relied upon to complete the work at the earliest possible time.

- If the offending party/parties fail to comply with the order, the commissioners may petition the state court for an order requiring immediate performance.

The district should contact the Division of Soil Conservation and Water Quality, who in turn will contact the Attorney General's office when help is requested. Upon request, the Attorney General's office will provide whatever legal services are necessary to pursue enforcement of the administrative or supplementary orders. If a court order is obtained, further failure to comply with the court order will then result in a sanction against the offending party/parties under the Contempt of Court power.

The Division of Soil Conservation and Water Quality should receive a copy of all administrative orders and supporting documents.

Nonagricultural Lands and Construction Projects

In the case of erosion occurring on the site of any construction project, or similar undertaking involving the removal of all or a major portion of vegetation or man-made cover, exposing bare soil to water or wind, the administrative order should specify a time, no later than five days after the service or mailing of the order to the offending party/parties, for the commencement of work necessary to control the erosion. A deadline, no later than thirty days after service or mailing of the order, for the completion of the improvements should also be stated therein. All other procedures are the same for agricultural lands and nonagricultural lands.

Iowa Department of Agriculture and Land Stewardship cost-share funds are not available for nonagricultural complaints.

Land Subject to Public Interest

Code of Iowa Section 161A.47 gives soil and water conservation district commissioners authority to inspect land subject to public interest that they feel is being damaged by sediment. Land is subject to public interest if 1) it is publicly held, 2) subject to an easement held by the public, or 3) the subject of an improvement made at public expense. An inspection of the land can be made upon a majority vote of the soil and water conservation district commissioners at an open meeting held pursuant to Code of Iowa Chapter 21.

If, after the inspection, the commissioners find that sediment damages are occurring to land which is owned or occupied by the person filing the complaint or subject to a public interest, and that excessive soil erosion is occurring on neighboring land, the commissioners shall issue an administrative order to the landowner or landowners of record and to the occupant of the land if known to the commissioners. The order shall describe the land and state as nearly as possible the extent to which soil erosion on the land exceeds the limits established by the district's regulations. The order shall be delivered either by personal service or by restricted certified mail.

If soil and water conservation district commissioners wish to inspect land subject to public interest, please contact the Division of Soil Conservation and Water Quality field representative for your area.

Checklist for Processing Soil Loss Complaints

1. Complaint
 - a. Does the complaint describe the property being damaged?
 - b. Is the complaint signed by the title holder of record or by the person working or living on the farm?
 - c. Does the complaint letter state that soil erosion is occurring upon the offending party's land in excess of district soil loss limits?
 - d. Establish a file to contain copies of the complaint, correspondence, forms, etc., concerning the complaint.

2. Investigation of the complaint
 - a. Is damage present? Inspection needs to be made as soon as possible.
 - b. Look for damage present on property in complaint.
 - c. Make documentation of damages by photographs, written statements and description.

3. Request for assistance from Natural Resources Conservation Service
 - a. Request assistance from NRCS District Conservationist.
 - b. Send copy of request to NRCS Assistant State Conservationist for Field Operations.

4. Notification of people against whom the complaint was filed
 - a. Set a date, time, location, and purpose for the meeting.
 - b. Request permission to enter the land on a date and at a specified time. The reason for entering the land will be to determine soil loss and develop alternatives.
 - c. Allow at least 10 days from the time the letter is sent until the date of the meeting. Detailed minutes of the meeting will be recorded.
 - d. Letter should be sent restricted certified mail.

5. Permission to enter land
 - a. Permission is to be granted by written documentation
 - b. If permission is not granted by written documentation obtain a search warrant.

6. Inspection of the land of the person against whom the complaint was filed
 - a. With technical assistance from the district conservationist, Form SL-1 will be completed.
 - b. Two or more alternative resource management systems will be developed to control soil loss to "T".

7. Discuss alternatives to control erosion with the person(s) against whom the complaint was filed
 - a. Schedule a meeting with the landowner when alternative resource management systems to control erosion are discussed. Try to arrive at a voluntary solution.
 - b. If the landowner refuses to meet to discuss the alternatives, after a reasonable period of time, proceed with an administrative order.

- c. If the landowner selects a resource system that will control the erosion, enter an application in FARMS as to what was agreed upon.
 - d. Should be noted in FARMS on the Practice Details page and Expense page comments that this is a Soil Loss Complaint.
8. If administrative order is issued
 - a. Contact the Division of Soil Conservation and Water Quality before the administrative order is sent.
 - b. Remember, once the administrative order is issued, the complaint cannot be withdrawn.
 - c. Decide on a time for the order to start and the time to complete the project.
 - d. Serve the order upon the titleholder of record (send to both husband and wife separately, if both on title). Also serve buyer and occupant of the land.
 - e. Send administrative order by restricted certified mail or by the sheriff.
 - f. Record the administrative order at the county recorder's office.
9. The supplementary order
 - a. Have to give 50 percent cost-share.
 - b. Establish estimated cost of permanent soil and water practices in district based upon one and two-tenths of the average cost of the practices installed during the previous year.
 - c. Check the \$10 per acre limit.
 - d. Send supplementary order by restricted certified mail or by the sheriff.
 - e. The supplementary order, board approval letter, and maintenance/performance agreement should be recorded in the county recorder's office.
10. Noncompliance with administrative order
 - a. Keep track of when work should start and be completed.
 - b. If work is not started or completed within the time limits, contact the Division of Soil Conservation and Water Quality.
11. Erosion controlled and problem solved
 - a. Send a letter of resolution to the parties involved.
 - b. Notify DSCWQ Field Representative

Flow Chart for Soil Loss Complaint

