



**UPPER BIG BLUE NATURAL RESOURCES DISTRICT
RULES AND REGULATIONS**

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RULES AND REGULATIONS FOR IMPLEMENTING THE NEBRASKA
EROSION AND SEDIMENT CONTROL ACT**

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UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

RULE 8 RULES AND REGULATIONS FOR IMPLEMENTING THE NEBRASKA EROSION AND SEDIMENT CONTROL ACT

CHAPTER 1 AUTHORITY

- 01 These rules and regulations are adopted as mandated by the State of Nebraska, pursuant to the authority granted in Chapter 2, Article 46 R.R.S., 1943 as amended.

CHAPTER 2 PURPOSE

- 01 The purpose of these rules and regulations is to implement the Nebraska Erosion and Sediment Control Act, Chapter 2, Article 46 R.R.S., 1943 as amended, in order to reduce damage from wind erosion and storm water runoff, to retard nonpoint pollution from sediment and related pollutants and to conserve and protect land, air and other resources of the state.

CHAPTER 3 APPLICABILITY

- 01 These rules and regulations apply to all lands within the District, except to the extent these lands 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.
- 02 Lands on which some nonagricultural land disturbing activities are occurring are also excluded. The excluded activities are identified in Chapter 4, 06.02 through 06.04 of these rules and regulations.

CHAPTER 4 DEFINITIONS

- 01 Alleged violator means the owner of record of land which is the subject of a complaint filed in accordance with Chapter 8 of these rules and regulations.
- 02 Board means the Board of Directors of the Upper Big Blue Natural Resources District.
- 03 Conservation agreement means an agreement between the owner of a farm unit and the District in which he or she agrees to implement all or a portion of a farm unit conservation plan.
 - 03.01 The agreement shall include a schedule for implementation and may be conditioned on the furnishing by the District or other public entity of technical, planning or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan.
- 04 District means the Upper Big Blue Natural Resources District.



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CHAPTER 4 (Continued) DEFINITIONS

- 05 Farm unit conservation plan means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the District, based upon the determined conservation needs for the farm unit and identifying the practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil loss limit. The plan may identify alternate practices by which such objective may be attained.
- 06 Nonagricultural 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 water of the state or onto lands in the state, but shall not include:
 - 06.01 activities related directly to the production of agricultural, horticultural or silvicultural crops, including but not limited to, tilling, planting or harvesting or such crops;
 - 06.02 installation of above ground public utility lines and connections, fence posts, sign posts, telephone poles, electric poles and other kinds of posts or poles;
 - 06.03 emergency work to protect life or property; and
 - 06.04 activities related to the construction of housing, industrial and commercial developments on sites under two (2) acres in size.
- 07 Sediment damage means the economic or physical damage to the land or other property of one person, resulting from the deposit of sediment by water, wind or soil eroded from the lands or another person.
 - 07.01 Soil erosion is adversely affecting water quality if the beneficial uses of the water are impaired because of sediment or chemicals deposited in the stream or lake involved.
 - 07.02 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 purposes of these rules and regulations.
- 08 T-value means the average annual tons per acre soil loss a given soil may experience and still maintain its productivity over an extended period of time.
- 09 Compliance officer means an employee, agent or director of the District designated by the board to perform the functions assigned in these rules and regulations.

CHAPTER 5 SOIL LOSS LIMITS

- 01 The soil loss tolerance T-value for each soil in the District as listed in the United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide is hereby established as the soil loss limit for that soil.
- 02 The permitted soil loss for particular lands may not exceed the T-value noted, except as provided in Chapter 12 of these rules and regulations.



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CHAPTER 6 ADMINISTRATION

- 01 The board delegates the responsibility for administering these rules and regulations to the compliance officer, except to the extent board action is specifically required:
 - 01.01 to keep an accurate record of all complaints received, investigations made, and other official actions;
 - 01.02 investigate all complaints made in writing to the District office relating to the application of these rules and regulations and report in writing all alleged violations to the board;
 - 01.03 monitor compliance with all farm unit conservation plans approved and orders issued by the board.
- 02 In addition, the compliance officer and such staff as he or she shall designate shall have the following powers and responsibilities:
 - 02.01 at any reasonable time, after notice to the owner and operator of record, to enter upon any public or private lands within the area affected by these rules and regulations to investigate complaints and to make inspections to determine compliance.
 - 02.01a the owner, operator and any other necessary technical personnel and representatives of the District may accompany the inspector.
 - 02.02 upon reasonable cause or question, 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,
 - 02.03 at the direction of the board, and in accordance with Chapter 19, to commence any legal proceedings necessary to enforce these rules and regulations and any order issued pursuant to them.

CHAPTER 7 VIOLATIONS

- 01 A violation of these rules and regulations exists if:
 - 01.01 sediment damage is occurring;
 - 01.02 average annual soil losses on the land which is the source of that damage are exceeding the soil loss limits adopted in Chapter 5 of these rules and regulations;
 - 01.03 the activity causing the soil loss is not an exempted nonagricultural land disturbing activity (Chapter 4, 06.02 through 06.04 of these rules and regulations); and
 - 01.04 the land which is the source of the damage is not in strict compliance with a conservation agreement approved by the District.



UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

RULE 8: EROSION AND SEDIMENT CONTROL

CHAPTER 8 COMPLAINTS

- 01 A complaint alleging that excessive soil erosion is occurring may be filed in the District office by:
 - 01.01 any owner or operator of land damaged by sediment;
 - 01.02 any authorized representative of a state agency or political subdivision whose roads or other public facilities are being damaged by sediment;
 - 01.03 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;
 - 01.04 any District staff member or other person authorized by the board to file complaints; or
 - 01.05 the board on its own motion.
- 02 Complaints shall be made in writing on a form provided by the Director of the Nebraska Department of Natural Resources.

CHAPTER 9 INVESTIGATION OF COMPLAINT

- 01 Upon receipt of a properly filed complaint, a representative of the District shall notify the alleged violator within ten (10) days that a complaint has been filed and that an investigation to determine whether a violation of these rules and regulations has occurred will be initiated.
- 02 The investigation shall take place as soon as possible after the complaint has been filed and notice given.
- 03 The alleged violator or his or her representative shall be given an opportunity to accompany the person conducting the investigation.
- 04 Upon completion of the investigation, the investigator shall file a report of his or her findings with the compliance officer and shall provide copies to the alleged violator and the complainant.
- 05 The report shall include:
 - 05.01 the location and estimated acreage involved in the alleged violation;
 - 05.02 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
 - 05.03 the location of land(s) which the investigator concludes are the source of the sediment, the nature of the land use on such land(s) and the estimated average annual soil losses from such land(s).
- 06 The investigator may utilize the services of professional staff, consultants or technicians of other state or federal agencies, if necessary.



UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

RULE 8: EROSION AND SEDIMENT CONTROL

CHAPTER 10 DETERMINATION OF SOIL LOSS

- 01 Soil losses shall be determined by using the applicable portions of the United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide to estimate the average annual water erosion (sheet and rill) or to estimate the average annual wind erosion.
- 02 The soil losses normally will be calculated on a soil survey mapping unit basis.
- 03 If it is determined that soil loss in excess of the applicable soil loss limits is occurring in the portion of one or more mapping units under the ownership and/or control of the alleged violator, they may not be averaged with other non-violating units for the purpose of determining overall soil loss.
- 04 If it is determined that the sediment damage complained of is resulting from erosion on a land parcel smaller than the soil mapping unit, the soil loss equation in the United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide may be applied to such smaller portion only if such portion is two (2) acres or greater.
- 05 The cover and crop management factor, “C”, used in calculating sheet and rill erosion, may incorporate a cropping history of up to five (5) years.
- 06 Crop rotation patterns longer than five (5) years but not more than ten (10) years may be used for the purpose of planning future compliance with soil loss limits but exceedance of the limits may not be planned for more than two (2) consecutive years.
- 07 Soil losses from irrigation, ephemeral gully, and gully erosion may also be determined by using acceptable scientific procedures and may, if deemed appropriate by the board, be added to the sheet and rill or wind erosion soil losses determined in accordance with the United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide.
- 08 Soil losses from stream bank erosion shall not be calculated and these rules and regulations are not applicable to this type of erosion.

CHAPTER 11 COMPLIANCE OFFICER'S ACTIONS

- 01 The compliance officer shall determine whether a violation of these rules and regulations has or has not occurred. Such determination shall be based upon the investigator's report completed pursuant to Chapter 9 of these rules and regulations.
- 02 The compliance officer shall report his or her findings to the alleged violator and the complainant with a recommendation of further action as follows:
 - 02.01 if the compliance officer determines that no violation of these rules and regulations has occurred, he or she shall dismiss the complaint;
 - 02.02 if the compliance officer determines that a farm unit conservation 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, he or she shall dismiss the complaint;



UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

CHAPTER 11 (Continued) COMPLIANCE OFFICERS ACTIONS

- 02.03** if the compliance officer determines that a violation of these rules and regulations has not occurred, in accordance with Chapter 11, 02.01 or 02.02 of these rules and regulations, the complainant shall be notified of his or her option to request a formal public hearing in the same manner provided herein to the alleged violator in Chapter 13 of these rules and regulations;
- 02.04** if the compliance officer determines that a violation of these rules and regulations has occurred he or she shall proceed in accordance with Chapter 13 of these rules and regulations.

CHAPTER 12 VARIANCE

- 01 The compliance officer may recommend and the board may approve a variance from the soil loss limit, established in Chapter 5 of these rules and regulations, if it determines that a limit of T-value cannot reasonably be applied to land which is the subject of a complaint. The soil loss permitted, however, may in no case exceed 2T. In making any such determination, the compliance officer shall consider the judgment of local professional soil conservationists and the economic consequences and feasibility of requiring conservation measures necessary to reduce soil losses to the T-value.

CHAPTER 13 NOTICE OF VIOLATION

- 01 If the compliance officer determines that a 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 registered or certified mail. The letter shall specify the options available to the alleged violator, which shall include the following:
- 01.01** The alleged violator shall be given an opportunity to contact the District within ten (10) days after receipt of notice concerning the development of a plan and schedule for eliminating excessive erosion and sedimentation from the land that generated the complaint.
- 01.01a** Possible practices for inclusion in a plan may be suggested.
- 01.01b** Information on cost-share programs and a statement indicating whether cost-share money is available shall also be supplied.
- 01.02** The alleged violator shall be given an opportunity to contest the compliance officer's findings by requesting a formal public hearing within ten (10) days after receipt of notice.
- 01.02a** The District's rules for formal adjudicatory hearings shall govern the conduct of all such hearings.
- 01.02b** The alleged violator shall be notified at least ten (10) days prior to the date that said hearing is to be held.
- 02 The alleged violator shall be further notified that if he or she does not respond to this notice, the board shall proceed in accordance with Chapter 16 of these rules and regulations 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.



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CHAPTER 14 DEVELOPMENT AND APPROVAL OF PLAN FOR COMPLIANCE

- 01 If the alleged violator contacts the District pursuant to Chapter 13, 01.01 of these rules and regulations and indicates a desire to attempt to jointly develop either a farm unit conservation plan or a plan for eliminating excessive erosion on and sedimentation from the land that generated the complaint, board action on the complaint shall be delayed until further action is taken by the compliance officer pursuant to Paragraphs 02 or 04 of this chapter.
- 02 The compliance officer and the alleged violator may secure the assistance of the Natural Resources Conservation Service and/or such other professional resource planners as are deemed necessary to aid in preparation of such a plan and shall attempt to prepare a mutually acceptable plan in accordance with the United States Department of Agriculture Natural Resources Conservation Service Field Office Technical Guide.
- 03 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 and/or utilized and shall be accompanied by a proposed conservation agreement setting forth a schedule for compliance.
 - 03.01 In considering the schedule for compliance contained within the conservation agreement, the board may approve a longer time for compliance than would be permissible if an order were issued pursuant to Chapter 16 of these rules and regulations, but will 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.
- 04 If a plan and conservation agreement can be developed and agreed upon by the alleged violator and the compliance officer, the compliance officer shall dismiss the complaint as provided in Chapter 11, 02.02 of these rules and regulations and provide notice to the complainant as provided in Chapter 11, 02.03 of these rules and regulations.
- 05 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.
- 06 If no mutually acceptable plan and conservation agreement have been prepared by the alleged violator and the compliance officer within an acceptable time period, the alleged violator shall be notified in person or by registered or certified mail and shall be given the information and option described in Chapter 13, 01.02 of these rules and regulations.
- 07 For purposes of this rule, acceptable time period shall mean:
 - 07.01 ninety (90) days for alleged violations involving agricultural, horticultural, or silvicultural activities; and
 - 07.02 fifteen (15) days for alleged violations involving nonagricultural land disturbing activities.



UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

RULE 8: EROSION AND SEDIMENT CONTROL

CHAPTER 15 PRACTICES

- 01 Practices designed to reduce or control soil erosion and/or sediment damage may be approved in developing a plan under Chapter 14 of these rules and regulations and may be required by the District in an administrative order issued pursuant to Chapter 16 of these rules and regulations.
- 02 Soil and water conservation practices, applicable only to land used for agricultural, horticultural or silvicultural purposes, may include:
 - 02.01 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; and
 - 02.02 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.
- 03 The District shall maintain a list of approved permanent and temporary soil and water conservation practices as part of its local erosion and sediment control program.
- 04 Erosion and sediment control practices, which are applicable to activities other than agricultural, horticultural or silvicultural activities, may include:
 - 04.01 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 limit 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;
 - 04.02 the use of temporary devices or structures, temporary seeding, mulching (including fiber mats, plastic and straw), diversions, silt fence, sediment traps or other measures adequate either to prevent erosion in excess of the applicable soil loss limit or to prevent excessive downstream sedimentation from land which is the site or is directly affected by any nonagricultural land disturbing activity; or
 - 04.03 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 limit.
- 05 The District shall maintain a list of approved erosion and sediment control practices as part of its local erosion and sediment control program.



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CHAPTER 16 ORDER

- 01 If, after board consideration of the complaint at a meeting or hearing for which the alleged violator has been given notice in accordance with Chapter 13 of these rules and regulations, the board finds that sediment damage has occurred, that average annual erosion on the land which is the source of that damage is occurring in excess of the applicable soil loss limit(s) and that a conservation plan has not been developed or is not being implemented according to a conservation agreement, it shall issue an administrative order to the violator stating:
- 01.01 the date of the order;
 - 01.02 the identity of the source of the violation and its location;
 - 01.03 the authority of the board to issue such order;
 - 01.04 the specific findings, including the estimated average annual soil loss and the extent to which erosion exceeds the applicable soil loss limit, and the nature of the sediment damage or water quality impairment resulting from such excessive erosion;
 - 01.05 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;
 - 01.05a when the complained of 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 limit;
 - 01.05b if the board knows that cost-share funds are or may not be available for necessary permanent soil and water conservation practices and desires utilization of temporary soil and water conservation practices in the interim until cost-sharing is made available it shall also specify such temporary practices in the order;
 - 01.05c where the erosion complained of is the result of a nonagricultural land disturbing activity, the board may authorize the violator to either bring the land into conformance with applicable soil loss limits or to prevent sediment resulting from excessive erosion from leaving the land;
 - 01.06 any requirements concerning the operation, utilization, or maintenance of the alternative practices identified.
 - 01.07 the deadlines for commencing and completing work necessary to comply with this order.
 - 01.07a 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 (6) months after service or mailing of the order and shall be completed not later than one (1) year after service or mailing of the order unless an extension has been granted upon a showing of good cause;
 - 01.07b if cost-share assistance for permanent soil and water conservation practices is not available when the order is issued, the time for initiating these practices shall be delayed until the District notifies the violator that cost-share assistance is available;



UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

RULE 8: EROSION AND SEDIMENT CONTROL

CHAPTER 16 (Continued) ORDER

01.07c a reasonable time for initiating work to establish necessary temporary erosion and sediment control practices for nonagricultural land disturbing activities and the time within which the work shall be satisfactorily completed, which shall be no longer than forty-five (45) days after service or mailing unless an extension has been granted upon a showing of good cause.

01.08 the action to be taken by the board if the violator does not comply.

- 02 A copy of the dismissal or administrative order shall be delivered to the owner of the land in question by personal service or certified or registered mail.

CHAPTER 17 COST-SHARE ASSISTANCE

- 01 If there is not available to any owner at least ninety (90) percent cost-sharing assistance for the installation of permanent soil and water conservation practices which are required in an approved farm unit conservation plan or are required by order of the board to conform agricultural, horticultural and silvicultural practices to the applicable soil loss limit, any such owner or operator shall not be required to install such practices pursuant to the Nebraska Erosion and Sediment Control Act until such cost-sharing assistance is made available.
- 02 The owner may be required to utilize temporary soil and water conservation practices in the interim to minimize soil erosion and sediment damage.
- 03 Cost-share assistance is not a condition of requiring erosion and sediment control practices for nonagricultural land disturbing activities.
- 04 Priority for cost-share assistance shall be based on the date the administrative order executed pursuant to these regulations was signed. As cost-share assistance becomes available, the administrative order with the earliest date will receive assistance first.

CHAPTER 18 SUPPLEMENTAL ORDERS

- 01 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 the work as required by the administrative order is due to factors beyond the control of the person to whom the order is directed and that person can be relied upon to commence and complete the necessary work at the earliest possible time.



UPPER BIG BLUE NATURAL RESOURCES DISTRICT RULES AND REGULATIONS

CHAPTER 19 NONCOMPLIANCE

- 01 The board may commence legal proceedings by filing a petition 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 it has reasonable cause to believe after inspection that an administrative order issued previously by the board is not being complied with because:
- 01.01 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;
 - 01.02 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;
 - 01.03 the work is not of a type or quality specified by the District and, when completed, will not or does not reduce soil loss to within the applicable soil loss limit for the identified land or, in the case of nonagricultural land disturbing activity, will not or does not prevent sediment resulting from excessive erosion from leaving the land involved;
 - 01.04 the person to whom the order is directed informs the District that he or she does not intend to comply.

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RULE 8: EROSION AND SEDIMENT CONTROL

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