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An Agricultural Law Research Article

**Land Use Regulatory Power of Conservation Districts
in the Midwestern States for Controlling Nonpoint
Source Pollutants**

Part Two

by

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conservation practices that may be applied to specific erosion problems⁵¹⁶ and to soil loss tolerance values, soil erodibility factors, and ratios of soil loss tolerance to soil erodibility by texture and percent of slope for each of the soils series in the state.⁵¹⁷ Local ordinances that have been adopted by the counties' governing bodies incorporate district conservation standards, and cover agricultural land-disturbing activities,⁵¹⁸ minor land-disturbing activities,⁵¹⁹ and nonagricultural land-disturbing activities.⁵²⁰ Persons engaged in agricultural or minor land-disturbing activities are not required to prepare a soil erosion and sediment control plan, file an application for a permit, nor report their activities, unless they are in violation of the district's conservation standard.⁵²¹ Nonagricultural activities that are subject to a permit under local ordinances for other purposes must adhere to the district's soil loss standard, and a soil erosion and sediment control plan must be filed before beginning the activity.⁵²²

The Ohio Division of Soil and Water Districts has adopted rules for the abatement of agricultural,⁵²³ urban,⁵²⁴ and animal waste⁵²⁵ nonpoint source pollution. With respect to agricultural and silvicultural pollution⁵²⁶ abate-

516. See S.D. EROSION & SEDIMENT GUIDELINES, *supra* note 283, at 2-18.

517. *Id.* at 36-59. A soil with a lower ratio of soil loss tolerance to soil erodibility needs more intensive conservation treatment than a soil with a higher ratio. See *id.*

518. "Agricultural land disturbing activities" are "[t]hose carried out by farmers and ranchers in the course of normal farming or ranching such as tilling and planting; and construction activities that are primarily designed to enhance production or conserve soil resources." A *Local Ordinance for the Control of Erosion and Sedimentation* § 3(11), in S.D. STATE CONSERVATION COMM'N & S.D. DEP'T OF AGRICULTURE, SUGGESTED GUIDELINES FOR LOCAL EROSION AND SEDIMENT CONTROL PROGRAMS (1977) [hereinafter cited as *S.D. Local Ordinance*].

519. "Minor land disturbing activities" include "construction of a single family dwelling by the owner, construction of private roadways from residence to public roads, home landscaping by owners, operators and tenants and garden areas that are not primarily commercial in nature." *Id.* § 3(12); See S.D. CODIFIED LAWS ANN. § 38-8A-17 (1977).

520. "Nonagricultural land disturbing activities" include "home construction in residential subdivisions, storm sewer and gutter construction, road construction and industrial development, which involve[s] grading or excavating." *S.D. Local Ordinance, supra* note 518, § 3(13).

521. *Id.* §§ 4(1), 5. See S.D. CODIFIED LAWS ANN. §§ 38-8A-17, -18 (1977). See also B. HOLMES, *supra* note 45, at 131.

522. *S.D. Local Ordinance, supra* note 518, § 6(1). See S.D. CODIFIED LAWS ANN. § 38-8A-16 (1977). See also B. HOLMES, *supra* note 45, at 131.

523. See Ohio Agricultural Rules, *supra* note 316, (codified at OHIO ADMIN. CODE ch. 1501:15-3 (1980)).

524. See Ohio Urban Rules, *supra* note 317, (codified at OHIO ADMIN. CODE ch. 1501:15-1 (1980)).

525. Ohio Animal Waste Rules, *supra* note 318, (codified at OHIO ADMIN. CODE ch. 1501:15-5 (1980)).

526. "'Pollution' means failure to use management or conservation practices in farming or silvicultural operations to abate wind or water erosion of the soil or to abate the degradation of the waters of the state by animal waste or soil sediment including substances attached thereto." Ohio Agricultural Rules, *supra* note 316, at § 1501:15-3-01(B)(21) (codified at OHIO

ment, the division established, in accordance with the statutes, "technically feasible" and "economically reasonable" management and conservation standards and criteria for determining the acceptability of the management and conservation practices to abate erosion and degradation of water by sediment, including substances attached to the sediment.⁵²⁷ These rules provided for the phased achievement over a period of years of the applicable soil loss tolerance factors or permissible soil loss values⁵²⁸ established in the SCS Technical Guide.⁵²⁹ After the initial phase, however, no phase that is more stringent can be applied until the division studies the economic impact of implementing the next phase and conducts at least one public hearing in each of the six soil and water conservation district areas.⁵³⁰

Rules adopted by the Ohio Division of Soil and Water Districts to control agricultural source pollutants apply to farming⁵³¹ and silvicultural operations and include land used for the production of crops and livestock, private and public woodlands,⁵³² building lots used or being constructed for use by farmers, and ditches and streams on farms being maintained or reconstructed by a local or state agency.⁵³³ To control water pollution caused by soil sediment from sheet and rill erosion, farmers are required to apply and maintain conservation practices and to follow a management system so that the predicted soil loss therefrom under a given set of cropping and manage-

ADMIN. CODE § 1501:15-3-01(B)(21) (1980)).

527. OHIO REV. CODE ANN. § 1511.02(E)(1) (Page Supp. 1982).

528. "'Soil loss' means the movement of soil from a given site by the forces of erosion and the redeposit of the soil at another site on land or in a body of water." Ohio Agricultural Rules, *supra* note 316, § 1501:15-3-01(B)(27) (codified at OHIO ADMIN. CODE § 1501:15-3-01(B)(27) (1980)).

529. OHIO REV. CODE ANN. § 1511.02(E)(1) (Page Supp. 1982). The "'Technical Guide' means the localized document for the soil and water conservation district developed . . . by the Soil Conservation Service [and] provides . . . soil descriptions . . . sound land use alternatives . . . adequate conservation treatment alternatives . . . standards and specifications of conservation practices [and] conservation cost-return information." Ohio Agricultural Rules, *supra* note 316, § 1501:15-3-01(B)(29) (codified at OHIO ADMIN. CODE § 1501:15-3-01(B)(29) (1980)). See SCS TECHNICAL GUIDE STANDARDS, *supra* note 255.

530. OHIO REV. CODE ANN. § 1511.02(E)(1) (Page Supp. 1982). See B. HOLMES, *supra* note 45, at 116-17.

531. "'Farming' means owning or operating a place of ten or more acres from which sales of farm products amounted to fifty dollars or more in the preceding calendar year or a place of fewer than ten acres from which the sales of farm products amounted to two hundred fifty dollars or more in the preceding year." Ohio Agricultural Rules, *supra* note 316, at § 1501:15-3-01(B)(13) (codified at OHIO ADMIN. CODE § 1501:15-3-01(B)(13) (1980)).

532. This regulation does not apply to woodlands owned, operated, or controlled by urban or metropolitan governments. *Id.* § 1501:15-3-02(A)(2) (codified at OHIO ADMIN. CODE § 1501:15-3-02(A)(2) (1980)).

533. *Id.* §§ 1501:15-3-02(A)(1)-(4) (codified at OHIO ADMIN. CODE §§ 1501:15-3-02(A)(1)-(4) (1980)). These rules do not apply to river and shore erosion areas and active strip and surface mining areas. *Id.* § 1501:15-3-02(B) (codified at OHIO ADMIN. CODE § 1501:15-3-02(B) (1980)).

ment conditions, as predicted by the Universal Soil Loss Equation,⁵³⁴ when combined with the predicted soil loss from wind erosion,⁵³⁵ will be equal to or less than the permissible soil loss tolerance values ("T values") for the specific soil series as specified in the Ohio Erosion Control Guide⁵³⁶ or in the Soil Conservation Technical Guide.⁵³⁷ To control pollution by sediment from gullies, drainageways, grassed waterways, ditches, and streams on farms or forests, operators are required to use proper design and construction of water flow channels, to maintain appropriate practices, and to use special erosion control measures to insure that the velocity of the flow does not exceed the permissible velocities listed in the SCS Technical Guide or in the Ohio Erosion Control Guide.⁵³⁸ Operators of any farm or forest may not use earth-disturbing practices, including tillage, immediately adjacent to any ditch, stream, or lake in such a manner that the disturbed soil is placed into, or may readily erode into, a ditch, stream, or lake, or onto another's property.⁵³⁹ An exception is provided for those practices constructed or implemented in accordance with proper engineering design.⁵⁴⁰

The Ohio Division of Soil and Water Districts has established "technically feasible" and "economically reasonable" standards to achieve a level of management of concentrated animal feeding operations⁵⁴¹ on farms that will abate water degradation by animal waste and will establish criteria for determining the acceptability of such management practices.⁵⁴² The Animal Waste Pollution Abatement Rules govern overflow and discharge from animal waste collection, storage and treatment facilities, seepage from animal waste management facilities, rainwater runoff from feedlots and waste management facilities, land application of animal waste and other wastewaters.⁵⁴³

534. The Universal Soil Loss Equation is set out in the SCS Technical Guide. See *supra* note 529.

535. Operators must "apply and maintain conservation practices and follow a management system" specified in the SCS Technical Guide or the Ohio Erosion Control Guide to control pollution by sediment from wind erosion. See Ohio Agricultural Rules, *supra* note 316, § 1501:15-3-05 (codified at OHIO ADMIN. CODE § 1501:15-3-05 (1980)).

536. OHIO STATE UNIVERSITY, OHIO EROSION AND SEDIMENT POLLUTION ABATEMENT GUIDE FOR AGRICULTURAL LAND, COOP. EXT. SERV. BULL. No. 594 (rev. May 1979).

537. Ohio Agricultural Rules, *supra* note 316, § 1501:15-3-03 (codified at OHIO ADMIN. CODE § 1501:15-3-03 (1980)). See SCS TECHNICAL GUIDE STANDARDS, *supra* note 255.

538. Ohio Agricultural Rules, *supra* note 316, § 1501:15-3-04 (codified at OHIO ADMIN. CODE § 1501:15-3-04 (1980)).

539. *Id.* § 1501:15-3-06 (codified at OHIO ADMIN. CODE § 1501:15-3-06 (1980)).

540. *Id.*

541. "'Concentrated animal feeding operation' means an animal feedlot and animal waste management facilities and land application areas for managing and disposal of animal waste." *Id.* § 1501:15-5-01(B)(10) (codified at OHIO ADMIN. CODE § 1501:15-5-01(B)(10) (1980)).

542. OHIO REV. CODE ANN. § 1511.02(E)(4) (Page Supp. 1982). See Ohio Animal Waste Rules, *supra* note 318 (codified at OHIO ADMIN. CODE ch. 1515:15-5 (1980)).

543. Ohio Animal Waste Rules, *supra* note 318, §§ 1515:15-5-02 to -06 (codified at OHIO ADMIN. CODE §§ 1515:15-5-02 to -06 (1980)).

Owners or persons responsible for any existing or proposed concentrated animal feeding operation must design, construct, operate, and maintain such facilities so that overflow or discharge into public waters is prevented.⁵⁴⁴ Considerations are to include the number and kind of animals, the average seasonal weather pattern, the type of system and required management, the method and seasonal time of waste disposal, and the soil types.⁵⁴⁵ To abate groundwater pollution "by animal waste caused by seepage from animal waste management facilities,"⁵⁴⁶ "existing or planned concentrated animal feeding operation" must be designed, constructed, operated, and maintained in such a manner that considers the soils, the geology, and the water table and aquifers.⁵⁴⁷ Rainwater runoff from feedlots and animal waste management facilities must be prevented by "constructing and operating settling, grass filtration or soil infiltration systems in accordance with the criteria in the 'Ohio Livestock Waste Management Guide'"⁵⁴⁸ by "diverting land surface water and roof water away from the feedlot and animal waste management facilities," by "constructing roof coverings over feedlots and waste storage areas;" or by "using appropriate storage with land application in a manner to prevent rainwater runoff from the facilities from entering public waters."⁵⁴⁹ Land application of animal waste is to be controlled by developing and following a system that provides for "maximum utilization of the nutrients in manure for crop production and for minim[um] potential for water pollution by taking into consideration" the characteristics of the animal waste, the available land, the land topography, the cropping system, the method of application, and the time of year.⁵⁵⁰ Milking facility wastewaters, continuous-flow poultry watering facility wastewaters, and silage drainage may not be discharged into public waters, roadside ditches, or subsurface drainage systems.⁵⁵¹

The third series of rules adopted by the Ohio Division of Soil and Water Districts established "technically feasible" and "economically reason-

544. *Id.* § 1505:15-5-06 (codified at OHIO ADMIN. CODE § 1505:15-5-06 (1980)).

545. *Id.* § 1501:15-5-02(A) (codified at OHIO ADMIN. CODE § 1501:15-02(A) (1980)).

546. "'Animal waste management' facility means any area or facilities used for the collection, storage, handling, or treatment of animal waste." *Id.* § 1501:15-5-01(B)(7) (codified at OHIO ADMIN. CODE § 1501:15-5-01(B)(7) (1980)).

547. *Id.* § 1501:15-5-03 (codified at OHIO ADMIN. CODE § 1501:15-5-03 (1980)).

548. OHIO STATE UNIVERSITY. OHIO LIVESTOCK WASTE MANAGEMENT GUIDE. COOP. EXT. SERV. BULL. No. 604 (Dec. 1975).

549. Ohio Animal Waste Rules, *supra* note 248, §§ 1501:15-5-04(A)-(D) (codified at OHIO ADMIN. CODE §§ 1501:15-5-04(A)-(D) (1980)). See OHIO STATE UNIVERSITY, OHIO LIVESTOCK WASTE MANAGEMENT GUIDE, COOP. EXT. SERV. BULL. No. 604 (Dec. 1975).

550. Ohio Animal Waste Rules, *supra* note 316, § 1501:15-5-05(A) (codified at OHIO ADMIN. CODE § 1501:15-5-05(A) (1980)).

551. *Id.* § 1501:15-5-06(A) (codified at OHIO ADMIN. CODE § 1501:15-5-06(A) (1980)). Methods and management practices for handling these wastes are set forth in the "Ohio Livestock Waste Management Guide." *Id.* § 1501:15-5-06(B) (codified at OHIO ADMIN. CODE § 1505:15-5-06(B) (1980)).

able" standards to achieve a level of management and conservation practices to abate soil erosion and degradation of waters by sediment in conjunction with grading, excavating, filling, or other earth-disturbing activities on land used, or being developed for, nonfarm commercial, industrial, residential, or other nonfarm purposes.⁵⁵² The rules also established criteria for determining the acceptability of such management and conservation practices.⁵⁵³ To control pollution of public waters by soil sediment from accelerated sheet and rill erosion on development areas,⁵⁵⁴ owners or persons responsible for the area must construct and maintain sediment basins sized in accordance with the Soil Conservation Service Handbook on Water Management and Sediment Control for Urbanizing Areas,⁵⁵⁵ apply and maintain a level of management, and conservation practices such that the predicted average annual soil loss is less than a specified amount for each year after the earth disturbance (accumulated monthly in accordance with the procedures in the SCS handbook for urbanizing areas) or use other methods to control sediment pollution that are acceptable to the approving agency.⁵⁵⁶ The urban rules also regulate concentrated water erosion,⁵⁵⁷ sloughing, landsliding, dumping,⁵⁵⁸ and stream channel and flood plain erosion.⁵⁵⁹

Only the Michigan⁵⁶⁰ and South Dakota⁵⁶¹ statutes specifically provide

552. OHIO REV. CODE ANN. § 1511.02(E)(2) (Page Supp. 1982). The standards were designed to implement applicable areawide waste treatment management plans prepared under section 208 of the Clean Water Act. Ohio Urban Rules, *supra* note 317, § 1501:15-1-01(A) (codified at OHIO ADMIN. CODE § 1501:15-1-01(A) (1980)). The standards and criteria applied to "land used or being developed for commercial, industrial, or residential purposes" in both urban and rural areas; "streets, roads, highways, railroads, airports, other transportation facilities and utilities, and associated areas;" and "private or public recreation, wildlife, or natural areas." *Id.* §§ 1501:15-1-02(A)(1)-(3) (codified at OHIO ADMIN. CODE §§ 1501:15-1-02(A)(1)-(3) (1980)). The standards and criteria do not apply to areas jointly managed as a farming or silvicultural operation, to strip mining operations, to surface mining operations, or to a "municipal corporation or county that adopts ordinances or rules for urban sediment control." OHIO REV. CODE ANN. § 1511.02(E)(2) (Page Supp. 1982); Ohio Urban Rules, *supra* note 317, §§ 1501:15-1-02(B)(1)-(4) (codified at OHIO ADMIN. CODE §§ 1515:15-1-02(B)(1)-(4) (1980)).

553. Ohio Urban Rules, *supra* note 317, §§ 1501:15-1-06 to -07 (codified at OHIO ADMIN. CODE §§ 1501:15-1-06 to -07 (1980)).

554. "'Development area' means any contiguous (abutting) area owned by one person or operated as one development unit and used or being developed for non-farm commercial, industrial, residential, or other non-farm purposes upon which earth disturbing activities are planned or underway." Ohio Urban Rules, *supra* note 317, § 1501:15-1-01(B)(4) (codified at OHIO ADMIN. CODE § 1501:15-1-01(B)(4) (1980)).

555. U.S. SOIL CONSERVATION SERVICE, DEP'T OF AGRICULTURE, WATER MANAGEMENT AND SEDIMENT CONTROL FOR URBANIZING AREAS (1978).

556. Ohio Urban Rules, *supra* note 317, §§ 1501:15-1-03(A)-(C) (codified at OHIO ADMIN. CODE §§ 1501:15-1-03(A)-(C) (1980)).

557. *Id.* § 1501:15-1-04 (codified at OHIO ADMIN. CODE § 1501:15-1-04 (1980)).

558. *Id.* § 1501:15-1-05 (codified at OHIO ADMIN. CODE § 1501:15-1-05 (1980)).

559. *Id.* § 1501:15-1-06 (codified at OHIO ADMIN. CODE § 1501:15-1-06 (1980)).

560. MICH. COMP. LAWS § 282.104(1) (1979).

561. S.D. CODIFIED LAWS ANN. §§ 38-8A-13 to -14 (1977).

that their erosion control programs apply to public lands. The South Dakota statute provides that proposed land-disturbing activities to be done on state or local government-owned land by a governmental agency, or under contract by the state or a political subdivision of the state, must be in accordance with the soil conservation districts erosion and sediment control standards.⁵⁶² The statewide rules for a unified soil erosion and sedimentation control program in Michigan apply to governmental agencies⁵⁶³ unless the Water Resources Commission finds that the governmental unit's soil erosion and sedimentation control procedures are adequate and designates the governmental unit as an authorized public agency to govern all land uses normally undertaken by the unit.⁵⁶⁴ Although Illinois⁵⁶⁵ and Ohio⁵⁶⁶ statutes do not explicitly provide that publicly-owned lands are subject to the state land use regulations, governmental agencies are included in the statutory definitions of persons, thereby bringing publicly-owned lands within the statutes. The Iowa statutes do not contain any provisions concerning publicly-owned lands.

Conservation practices that may be included in the land use regulations of the five midwestern states with somewhat mandatory programs are generally broader than those that may be included in the states with land use regulations patterned after the Standard Districts Law.⁵⁶⁷ All includable practices are based on land-disturbing activities on both agricultural and nonagricultural lands, and all include sediment control in addition to erosion control.⁵⁶⁸ Ohio's regulations also include the control of material attached to sediment.⁵⁶⁹ One drawback to the Iowa⁵⁷⁰ and South Dakota⁵⁷¹ regulations is that they do not apply to agricultural land unless the erosion exceeds the specified soil loss limits and a complaint has been filed. Iowa's statutes provide that particular practices may not be specifically required as long as the owner voluntarily complies with the applicable soil loss limits, and that the district may not require the employment of erosion control

562. *Id.*

563. MICH. COMP. LAWS § 282.106(1) (1979).

564. *Id.* § 282.111.

565. ILL. REV. STAT. ch. 5, § 108.11 (Supp. 1983).

566. Ohio Agricultural Rules, *supra* note 316, § 1501:3-01(B)(20) (codified at OHIO ADMIN. CODE § 1501:15-3-01(B)(20) (1980)); Ohio Urban Rules, *supra* note 317, § 1501:15-1-01(B)(15) (codified at OHIO ADMIN. CODE § 1501:15-1-01(B)(15) (1980)).

567. Compare ILL. REV. STAT. ch. 5, § 128 (Supp. 1983); IOWA CODE § 467A.42(2)-(3) (1983); MICH. COMP. LAWS § 282.104(1) (1979); OHIO REV. CODE ANN. § 1511.02(E) (Page Supp. 1982); S.D. CODIFIED LAWS ANN. §§ 38-8A-4 to -5 (1977) with STANDARD DISTRICTS LAWS, *supra* note 12, § 9.

568. ILL. REV. STAT. ch. 5, §§ 128, 138.5 (Supp. 1983); IOWA CODE 467A.44 (1983); MICH. COMP. LAWS § 282.104(1)(1979); OHIO REV. CODE ANN. § 1511.02(E) (Page Supp. 1982); S.D. CODIFIED LAWS ANN. §§ 38-8A-4, -5(3), -17 (1977).

569. OHIO REV. CODE ANN. § 1511.02(E)(1) (Page Supp. 1982).

570. See IOWA CODE §§ 467A.44(3), .47 (1983).

571. See S.D. CODIFIED LAWS ANN. §§ 38-8A-17, -18 (1977).

practices on agricultural land.⁵⁷² The South Dakota statutes do not require the owners of agricultural land to prepare a plan nor to file a permit application when disturbing land.⁵⁷³ Agricultural practices, except for plowing and tillage, and for farmers with cooperative agreements, are subject to the Water Resources Commission rules in Michigan.⁵⁷⁴

As far as management practices and land disturbing activities that may be included in the content of land use regulations are concerned, the statutes and regulations of these five states are probably broad enough to fulfill the regulatory requirements of section 208 areawide water quality management plans.⁵⁷⁵ Problems could exist, however, in Iowa, Michigan, and Ohio with regard to agricultural land. The Ohio regulations relating to agricultural sediment, urban runoff, and animal wastes provide the broadest coverage of practices that may be included in land use regulations.⁵⁷⁶

D. Administration of Regulations

1. Permissive Regulatory Powers

As with the Standard Districts Law, there is nothing in the Illinois, Kentucky, and North Dakota statutes as to how land use regulations are to be administered or who is to administer them. The Nebraska statutes provide only that districts have power to administer the rules and regulations.⁵⁷⁷ Wisconsin statutes provide that the county board of supervisors are to prescribe applicable administrative procedures in the land use ordinance.⁵⁷⁸

Under the Wisconsin Model Ordinance county zoning administrators are to be designated by the soil and water conservation districts to administer the land use regulations.⁵⁷⁹ They are to issue the required permits for general land-disturbing activities and, if needed, for agricultural, forestry, and conservancy uses.⁵⁸⁰ Applications for permits, along with soil erosion, runoff, and sedimentation control plans and specifications are to be submitted to the county zoning administrator,⁵⁸¹ who in turn is to send the plans and specifications to the district supervisors.⁵⁸² The district supervisors are

572. IOWA CODE § 467A.44(3)(a), (c)(1) (1983).

573. S.D. CODIFIED LAWS ANN. § 38-8A-17 (1977).

574. MICH. COMP. LAWS § 282.104(1) (1979); Telephone interview with John Kennaugh, *supra* note 303.

575. 33 U.S.C. § 1288 (1976 & Supp. V 1981).

576. See Ohio Agricultural Rules, *supra* note 316; Ohio Urban Rules, *supra* note 317;

Ohio Animal Waste Rules, *supra* note 318.

577. NEB. REV. STAT. § 2-3244 (1977).

578. WIS. STAT. § 92.11(5)(a) (1981-1982).

579. WISCONSIN MODEL ORDINANCE, *supra* note 412, § 7.01.

580. *Id.* § 7.02(a). See *id.* § 3.01-02.

581. *Id.* § 4.01.

582. *Id.* § 4.03.

to determine whether proper measures have been provided in the plans and specifications to prevent erosion, runoff, and sedimentation during and after land disturbances, in accordance with the Soil Conservation Service Technical Guide.⁵⁸³ After approval of the plan is given by the district, the zoning administrator may issue a permit.⁵⁸⁴

The soil and water conservation district has administrative responsibilities under the Vernon County Ordinance.⁵⁸⁵ Land occupiers or users must submit plans to the district for approval prior to disturbing an area of 10,000 square feet or more for nonagricultural or nonforestry activities.⁵⁸⁶ The district has thirty days to review the plans and must either approve or reject them within that period.⁵⁸⁷ As a condition for approval the district may require all grading, excavations, fills, open cuts, slide slopes, and other land disturbances to be mulched, seeded, or otherwise protected, so that erosion and sedimentation are controlled in accordance with the specifications established by the district based on the SCS Technical Guide.⁵⁸⁸

The enabling legislation in these five midwestern states that is concerned with administrative procedures is probably inadequate to effectively provide the necessary regulatory programs for nonpoint source pollution provided in the areawide water quality management plans developed under section 208 of the Clean Water Act.⁵⁸⁹ Such legislation should provide the method by which regulations are to be administered, including whether permits are to be issued, and if issued, who is responsible for issuing them, and what plans and specifications are required to accompany the permit application. The powers and duties of the administrator should be specified by the enabling legislation, along with the permit, plan, and specifications requirements.

2. Mandatory Regulatory Powers

Of the five midwestern states with mandatory soil conservation regulatory powers, only the Michigan⁵⁹⁰ and South Dakota⁵⁹¹ statutes provide

583. *Id.* The district has 30 days to return comments to the county zoning administrator. *Id.* In event of rejection, the land occupier or user may within 60 days submit a revised plan to meet the standards and specifications as adopted by the district or appeal the district's rejection to the board of adjustment. *Id.*

584. *Id.* § 4.04. The ordinance can be written giving the county zoning administrator discretionary power to submit the plans and specifications to the district supervisors for review and approval. *Id.*

585. Vernon County Ordinance, *supra* note 254 at § 6.01.

586. *Id.* §§ 3.02(b), 4.01. *See id.* § 3.02(a).

587. *Id.* § 4.03. In event of rejection, a revised plan may be submitted to meet the district's standards and specifications or the land occupier or user may appeal the decision to the board of adjustment. *Id.*

588. *Id.* § 4.03(a).

589. 33 U.S.C. § 1288 (1976 & Supp. V 1981).

590. *See* MICH. COMP. LAWS § 282.106(1) (1979).

much detail on the administrative procedures for the regulations. Regulations are administered by the soil and water conservation districts in Illinois⁵⁹² and Iowa,⁵⁹³ by the counties in Michigan,⁵⁹⁴ by the local permit-issuing authorities in South Dakota,⁵⁹⁵ and by the Division of Soil and Water Districts in Ohio.⁵⁹⁶

Soil and water conservation districts in Illinois are responsible for establishing soil erosion and sediment control programs and conservation standards for various types of soils and land uses.⁵⁹⁷ Districts are responsible for providing, upon request, available information and technical assistance to persons engaged in land-disturbing activities to enable them to comply with the standards.⁵⁹⁸ Once standards have been adopted, districts are to encourage all persons engaged in land-disturbing activities to comply with them.⁵⁹⁹ When land disturbing activities do not comply with conservation standards, it is the district's responsibility to suggest modifications in management practices to enable land disturbers to comply with the standards.⁶⁰⁰ Illinois has no requirement that persons engaged in land-disturbing activities must apply to districts for permits or must submit erosion and sediment control plans for their activities.

As in Illinois, soil conservation districts in Iowa are responsible for adopting reasonable regulations to establish and implement soil loss limits.⁶⁰¹ Districts may require landowners to employ either soil and water conservation practices or erosion control practices, but may not specify the particular practices to be employed as long as the owners voluntarily comply with the applicable soil loss limits established for the district.⁶⁰² Neither permits nor plans are required for land disturbing activities under the Iowa statutes.

The Ohio Division of Soil and Water Districts established procedures for administering the rules for agricultural pollution abatement and urban sediment pollution abatement, and for enforcing the rules for animal waste management.⁶⁰³ In addition, the Division of Soil and Water Districts may recommend criteria and procedures "for the approval of urban sediment

591. See S.D. CODIFIED LAWS ANN. §§ 38-8A-15, -16 (1977).

592. ILL. REV. STAT. ch. 5, § 138.5 (Supp. 1983).

593. IOWA CODE § 467A.44 (1983).

594. MICH. COMP. LAWS § 282.106(1) (1979).

595. S.D. CODIFIED LAWS ANN. § 38-8A-16 (1977).

596. OHIO REV. CODE ANN. § 1511.02(E)(5) (Page Supp. 1982).

597. ILL. REV. STAT. ch. 5, § 138.5 (Supp. 1983). See ILLINOIS EROSION & SEDIMENT GUIDELINES, *supra* note 283, R. 10.1.

598. ILL. REV. STAT. ch. 5, § 138.6 (Supp. 1983).

599. *Id.*

600. *Id.* See B. HOLMES, *supra* note 45 at 126-27 for further discussion.

601. IOWA CODE § 467A.44 (1983).

602. *Id.* § 467A.44(3).

603. OHIO REV. CODE ANN. § 1511.02(E)(5) (Page Supp. 1982). See *supra* notes 316 to 318 for the rules.

pollution abatement plans and issuance of permits prior to any grading, excavating, filling, or other whole or partial disturbance of five or more contiguous acres of land owned by one person or operated as one development unit and [may] require implementation of such plan."⁶⁰⁴ Under the Ohio Agricultural Rules, the division must inform the soil and water conservation districts of state standards, criteria, and procedures for pollution abatement, enter into cooperative agreements with "districts desiring to enter into such agreements for implementing agricultural pollution abatement programs . . . provide administrative guidance to districts in planning, budgeting, staffing, implementing, and administering the agricultural pollution abatement problem," and implementation of the agricultural pollution abatement program in districts failing to negotiate an agreement with the division.⁶⁰⁵ Neither permits nor plans and specifications are required for land-disturbing activities in Ohio.

As previously stated, both Michigan⁶⁰⁶ and South Dakota⁶⁰⁷ statutes provide more specific detail on administrative procedure. The counties in Michigan are responsible for the administration of rules adopted by the state for soil erosion and sedimentation control throughout the county.⁶⁰⁸ The counties have no such responsibility, however, within a city, village, or charter township that has an ordinance providing for soil erosion and sedimentation control,⁶⁰⁹ or with regard to land uses of authorized public agencies which have been approved by the Michigan Water Resources Commission.⁶¹⁰ County boards of commissioners are responsible for adopting resolutions that designate a particular county agency as the county enforcing agency responsible for administering the rules adopted by the state, and also for setting fee schedules for inspections, plan reviews, permits, and other matters relating to the administration and enforcement of the rules.⁶¹¹ Each county enforcing agency adopts by reference the soil conservation dis-

604. OHIO REV. CODE ANN. § 1511.02(E)(3) (Page Supp. 1982).

605. Ohio Agricultural Rules, *supra* note 316, § 1501:15-3-08 (codified at OHIO ADMIN. CODE § 1501:15-3-08 (1980)). See Ohio Urban Rules, *supra* note 317, § 1501:15-1-08 (codified at OHIO ADMIN. CODE § 1501:15-1-08 (1980)) and Ohio Animal Waste Rules, *supra* note 318, § 1501:15-5-09 (codified at OHIO ADMIN. CODE § 1501:15-5-09 (1980)) for similar administrative responsibilities of the division.

606. See MICH. COMP. LAWS §§ 282.104 - .115 (1979).

607. See S.D. CODIFIED LAWS ANN. § 38-8A-1 to -21 (1977 & Supp. 1983).

608. MICH. COMP. LAWS § 282.106(1) (1979).

609. See *id.* § 282.107 (1979) for the authority of a city, village, or charter township to enact ordinances providing for "soil erosion and sedimentation control on public and private land uses within its boundaries."

610. *Id.* § 282.106(1). See *id.* § 282.111 for the authority of state, local, or county agencies to apply to the Water Resources Commission for "designation as an authorized public agency by submitting to the commission the soil erosion and sedimentation control procedures governing all land uses normally undertaken by the agency."

611. *Id.* § 282.106(2) (1979). See *id.* § 282.106(3) which permits two or more counties to provide joint administration by entering into an interlocal agreement.

trict's standards and specifications for soil and sedimentation control.⁶¹²

Michigan landowners or developers who contract for, allow, or engage in any earth changes are required to obtain permits from the appropriate county enforcing agencies prior to commencing the earth changes.⁶¹³ Permits are required if the earth changes will disturb one or more acre of land or if they will be within 500 feet of a lake or stream, and if they are connected with any activity that involves transportation facilities, subdivision or lot development, industrial or commercial development, service facilities, recreational facilities, utilities, oil, gas, and mineral wells, water impoundments, or waterway construction or improvement.⁶¹⁴ Applications for permits must be submitted to the appropriate enforcing agencies by persons proposing to undertake earth changes⁶¹⁵ and must be accompanied by appropriate soil erosion and sedimentation control plans.⁶¹⁶ The soil erosion and sedimentation control plans must be reviewed and approved prior to the issuance of permits.⁶¹⁷ Only after applicants have met all the state rules and local ordinance requirements may the appropriate enforcing agencies issue permits for the proposed earth changes.⁶¹⁸

The adopted soil erosion and sedimentation control procedures and measures must be appropriately incorporated into soil erosion and sedimentation control plans and must be applied to all earth changes.⁶¹⁹ Local soil conservation district erosion and sedimentation control standards and specifications that have been approved by the county or local enforcing agencies must be followed and utilized as they apply to earth changes requiring ero-

612. Telephone interview with John Kennough, *supra* note 303.

613. MICH. ADMIN. CODE R. 323.1704(1) (1981).

614. MICH. COMP. LAWS § 282.113(1) (1979); MICH. ADMIN. CODE R. 323.1704(1) (1981). See MICH. ADMIN. CODE R. 323.1704(1)(a)-(h) (1981) for the permit exceptions for each earth-changing activity.

615. MICH. ADMIN. CODE R. 323.1706(1) (1981). As a condition for issuing a permit, the county or local enforcing agencies of cities, villages, or towns adopting an ordinance may require the applicant to deposit cash, a certified check, or an irrevocable bank letter of credit (whichever the applicant selects) or a surety bond, in an amount sufficient to assure the installation and completion of such protective or corrective measures as may be required by the county or local enforcing agencies. MICH. COMP. LAWS § 282.109 (1979).

616. MICH. ADMIN. CODE R. 323.1706(2) (Supp. 1974). See *id.* R. 323.1703 for the soil erosion and sedimentation control plan requirements.

617. *Id.* R. 323.1707(1). Plans must be reviewed by persons trained and experienced in soil erosion and sedimentation control methods and techniques. *Id.*

618. *Id.* R. 323.1717(5). Enforcing agencies have 30 days to approve, disapprove, or require modification of applications for earth change permits. *Id.* R. 323.1707(2). Local governments issuing building permits must notify county or local enforcing agencies of applications received for building permits requiring earth changes that disturbs any land located within 500 feet of a lake or stream. *Id.* R. 323.1711(1). Local governments may not issue building permits to persons engaged in earth changes requiring permits for soil erosion and sedimentation control until the county or local enforcing agencies have the required state prescribed permits for earth changes. *Id.* R. 323.1711(2).

619. *Id.* R. 323.1708.

sion and sedimentation control plans.⁶²⁰ Specific requirements are set forth for earth changes, which include provisions that all earth changes must be designed, constructed, and completed in the shortest possible time, as determined by the enforcing agencies, to limit the exposed areas of any disturbed land; that "[s]ediment caused by accelerated soil erosion [must] be removed from runoff water before it leaves the site of the earth change;" that temporary or permanent facilities designed and constructed for water conveyance must limit the water flow to a nonerosive velocity; that "temporary soil erosion control facilities [must] be removed after permanent soil erosion measures have been implemented;" and that "[p]ermanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area [must] be completed within fifteen calendar days after final grading or the final earth change has been completed."⁶²¹ "County or local enforcing agencies may enter into an agreement with a soil conservation district for assistance and advice in overseeing and reviewing compliance with soil erosion and sedimentation control procedures and in reviewing existing or proposed land uses, land use plans, or site plans with regard to technical matters pertaining to soil erosion and sedimentation control."⁶²²

After January 1, 1979, all agricultural practices, except earth changes due to plowing and tillage, are subject to the Michigan soil erosion and sedimentation control rules, and are subject to the permit requirements unless they are subject to an agreement with the soil conservation district.⁶²³ Pursuant to the Water Resources Commission's rules, persons engaged in agricultural practices may enter into an agreement with the appropriate soil conservation district to engage in the included agricultural practices.⁶²⁴ The district must notify the county or local enforcement agency of any such agreements.⁶²⁵ Those persons entering into such agreements who are performing their agricultural practices in accordance with the rules need not apply for permits nor prepare and submit land use or site plans, but are subject to the enforcement provisions of the law.⁶²⁶

Conservation districts in South Dakota are responsible for adopting conservation standards, based on state guidelines,⁶²⁷ that are consistent "with the control of erosion and sediment resulting from land-disturbing activities."⁶²⁸ The standards are administered by the permit-issuing authorities,⁶²⁹ which are the municipalities or other political subdivisions responsi-

620. *Id.* R. 323.1710.

621. *Id.* R. 323.1709(1)-(5).

622. MICH. COMP. LAWS § 282.110(1) (1979).

623. *Id.* § 282.104(1). *See id.* § 282.110(2).

624. *Id.* § 282.110(1)-(2).

625. *Id.* § 282.110(2).

626. *Id.*

627. *See* S.D. CODIFIED LAWS ANN. § 38-8A-4 (1977).

628. *Id.* § 38-8A-11.

629. *Id.* § 38-8A-16.

ble for granting or issuing zoning or building permits.⁶³⁰ Each permit-issuing authority within the conservation district must include provisions in its permit procedure to ensure that any proposed action relating to a permit is in compliance with the district conservation standards.⁶³¹ Neither the state Conservation Commission nor the conservation districts may issue permits.⁶³² Persons engaged in agricultural land-disturbing activities or minor land-disturbing activities need not prepare a conservation plan, file an application, secure a permit, nor report their activities to the conservation district unless they violate the district standards.⁶³³

Only the Michigan⁶³⁴ and the South Dakota⁶³⁵ statutes and regulations provide much detail on administrative procedures, and they are the only two states that require the issuance of permits for land-disturbing activities. Soil and water conservation districts are involved as the primary governmental units administering conservation standards only in Illinois⁶³⁶ and Iowa,⁶³⁷ while in Michigan⁶³⁸ and South Dakota⁶³⁹ that responsibility rests with other local units of government. The state administers the standards in Ohio.⁶⁴⁰ Basically, only the Michigan statutes⁶⁴¹ provide sufficient detail as to who is to administer the conservation program, and how it is to be administered, to be adequate enough for the section 208 areawide water quality management plan.⁶⁴² Administration of standards in Michigan is not done by the soil conservation districts, but rather by the counties.⁶⁴³

E. Administrative Appeal Procedures

Kentucky⁶⁴⁴ and North Dakota⁶⁴⁵ are the only states with permissive land use regulatory powers that provide for administrative appeal procedures.⁶⁴⁶ None of the states with mandatory regulatory powers provide for such appeals. Administrative appeals provide a procedure whereby variances may be permitted from the strict terms of the land use regulations in cases

630. *Id.* § 38-8A-1(16).

631. *Id.* § 38-8A-16.

632. *Id.* § 38-8A-15.

633. *Id.* § 38-8A-17.

634. See MICH. COMP. LAWS § 282.104-.115 (1979 & Supp. 1983-1984).

635. See S.D. CODIFIED LAWS ANN. §§ 38-8A-1 to -21 (1977 & Supp. 1983).

636. See ILL. REV. STAT. ch. 5, §§ 129-30, 138.5-.6, .8 (Supp. 1983).

637. See IOWA CODE §§ 467A.42-66 (1983).

638. See MICH. COMP. LAWS § 282.106 (1979).

639. See S.D. CODIFIED LAWS ANN. §§ 38-8A-14 to -21 (1977).

640. OHIO REV. CODE ANN. § 1511.02(H) (Page Supp. 1983).

641. See MICH. COMP. LAWS § 282.106 (1979).

642. See 33 U.S.C. § 1288 (1976 & Supp. V 1981).

643. MICH. COMP. LAWS § 262.106(1) (1979).

644. KY. REV. STAT. § 262.490-.520 (1981).

645. N.D. CENT. CODE § 4-22-37 (1975).

646. Wisconsin formerly also provided for such appeals. See WIS. STAT. § 92.12(3) (1979-1980) (repealed 1981).

where application of the letter of the regulations would result in great practical difficulties or unnecessary hardship.⁶⁴⁷ One method of allowing for variances is provided for by allowing supervisors to classify lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and to provide regulations which vary with the type or class of land affected, but which are uniform as to all lands within each class or type.⁶⁴⁸ Another method is to provide in the terms of the regulations for the making of variances for a particular tracts through an appeal to the board of adjustment.⁶⁴⁹

Soil and water conservation district boards adopting land use regulations in Kentucky⁶⁵⁰ and North Dakota,⁶⁵¹ and under the Standard Districts Law,⁶⁵² must provide in the ordinance for the establishment of a board of adjustment consisting of three members. Members of the boards of adjustment are appointed by the state soil and water conservation committee with the advice and approval of the district for which the board is established.⁶⁵³ The boards adopt their own rules and regulations to govern their procedures.⁶⁵⁴ Wisconsin's new statutes merely state that the county board must provide for the appointment of a board of adjustment in any county which adopts a land use ordinance.⁶⁵⁵ Presumably these boards of adjustment will be similar to the ones created by the county zoning ordinance statute and will have the same powers and duties.⁶⁵⁶

A person aggrieved by the land use regulations may file a petition with the board of adjustment alleging that strict compliance with the land use regulations prescribed by the ordinance will cause great practical difficulties or unnecessary hardship for them, and asking that the board authorize a variance from the terms of the regulations in its application to their lands.⁶⁵⁷

647. See KY. REV. STAT. § 262.490-.510 (1981); N.D. CENT. CODE § 4-22-37 (1975).

648. See *supra* notes 391-93, 460-62 and accompanying text.

649. *Memorandum on Constitutionality*, *supra* note 148 at 58. See KY. REV. STAT. § 262.490 (1981); N.D. CENT. CODE § 4-22-37 (1975).

650. KY. REV. STAT. § 262.460(1) (1981).

651. N.D. CENT. CODE § 4-22-35 (1975).

652. STANDARD DISTRICTS LAW, *supra* note 12, § 12(A).

653. KY. REV. STAT. § 262.460(2) (1981); N.D. CENT. CODE § 4-22-35 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 12(A).

654. KY. REV. STAT. § 262.480(1) (1981); N.D. CENT. CODE § 4-22-36 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 12(B).

655. WIS. STAT. § 92.11(6) (1981-1982).

656. Wisconsin's old statutes provided that the board of adjustment created under the county zoning ordinance would be used as the board of adjustment for appeals under the land use ordinance. *Id.* § 92.12 (1979-1980). See *id.* § 59.99 for the creation, powers, and duties that a board of adjustment had under a zoning ordinance. The original version of the Wisconsin soil and water conservation district act contained the same provisions as the old law, but those provisions were items vetoed by the governor.

657. KY. REV. STAT. § 262.490 (1981); N.D. CENT. CODE § 4-22-37 (1975); STANDARD DIS-

The board of adjustment is required to fix a time for a hearing on the petition and to give due notice thereof.⁶⁵⁸ If the board of adjustment finds from the facts presented at the hearing that great practical difficulties or unnecessary hardships result from strictly applying the land use regulations to the petitioners' lands, it may authorize a variance in applying the land use regulations to the petitioners' lands if such a variance would not be contrary to the public interest.⁶⁵⁹

Any petitioner who has been aggrieved by an order of the board of adjustment, or the district board of supervisors, may obtain a review of the order in the circuit court for the county within which the petitioner's land lies by filing a petition asking that the order be modified or set aside.⁶⁶⁰ The court may grant temporary relief to the petitioner pending a hearing.⁶⁶¹ After the hearing, the court will enter its decree enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the board of adjustment's order.⁶⁶²

F. Enforcement of Regulations

1. Permissive Regulatory Powers

A variety of methods to enforce the land use regulations are available in the midwestern states following permissive regulatory powers similar to the Standard Districts Law. The Wisconsin statutes go furthest by providing that land use ordinances must prescribe administrative procedures and provide the administrative assistance and personnel necessary to enforce the land use regulations.⁶⁶³ Only the Nebraska statutes do not provide for enforcement powers.

Soil and water conservation district supervisors have the authority in Illinois,⁶⁶⁴ Kentucky,⁶⁶⁵ and North Dakota,⁶⁶⁶ and under the Standard Districts Law,⁶⁶⁷ to enter upon any lands within the district that are affected by the land use regulations in order to determine whether they are in compli-

TRICTS LAW, *supra* note 12, § 12(C).

658. KY. REV. STAT. § 282.500 (1981); N.D. CENT. CODE § 4-22-37 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 12(C).

659. KY. REV. STAT. § 262.510 (1981); N.D. CENT. CODE § 4-22-37 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 12(C).

660. KY. REV. STAT. § 262.520 (1981); N.D. CENT. CODE § 4-22-39 (1979); STANDARD DISTRICTS LAW, *supra* note 12, § 12(D).

661. KY. REV. STAT. § 262.520 (1981); N.D. CENT. CODE § 4-22-39 (1979); STANDARD DISTRICTS LAW, *supra* note 12, § 12(C).

662. KY. REV. STAT. § 262.520 (1981); N.D. CENT. CODE § 4-22-39 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 12(C).

663. WIS. STAT. § 92.11(5)(a) (1981-1982).

664. ILL. REV. STAT. ch. 5, § 129 (Supp. 1983).

665. KY. REV. STAT. § 262.420(2) (1981).

666. N.D. CENT. CODE § 4-22-23 (1975).

667. STANDARD DISTRICTS LAW, *supra* note 12, § 10.

ance with the ordinance. The provision in the fourth amendment of the federal Constitution that states "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." ⁶⁶⁸ is binding only upon the federal government, and therefore, is inapplicable to state legislation. ⁶⁶⁹ Some state constitutions contain the same language as the fourth amendment, but courts have generally held that lands and open fields are not within the protection of the "search and seizure" clauses. ⁶⁷⁰ Also, public officers who enter private lands in the performance of public functions, where the entry is authorized by statute and is made in good faith, are not liable for trespass, nor may their entry be enjoined. ⁶⁷¹

The district supervisors in Illinois ⁶⁷² and Kentucky, ⁶⁷³ and under the Standard Districts Law, ⁶⁷⁴ may provide by ordinance that any land owner or occupier damaged by another land owner's or occupier's violation of land use regulations may recover damages from the violator. Wisconsin's statutes provide that land use ordinances may be enforced through civil forfeitures or through the issuance of an injunction by the circuit court in an action initiated by the county or land conservation committee. ⁶⁷⁵ Violators of the regulations under the Standard Districts Law may be adjudicated guilty of a misdemeanor and punished by a fine. ⁶⁷⁶ There are no criminal penalties or civil forfeitures provided for in Illinois, Kentucky, or North Dakota. ⁶⁷⁷

The county land conservation committee in Wisconsin must make a

668. U.S. CONST. amend. IV.

669. See *Memorandum on Constitutionality*, *supra* note 148 at 56.

670. See *Hester v. United States*, 265 U.S. 57 (1924); *United States v. Western & Atlantic R.R. Co.*, 297 F. 482 (D.C. Ga. 1924); *Koscielski v. State*, 199 Ind. 546, 158 N.E. 902 (1927); *Brent v. Commonwealth*, 194 Ky. 504, 240 S.W. 45 (1922).

671. See *Memorandum on Constitutionality*, *supra* note 148 at 57.

672. ILL. REV. STAT. ch. 5, § 129 (Supp. 1983).

673. KY. REV. STAT. § 262.420(1) (1981).

674. STANDARD DISTRICTS LAW, *supra* note 12, § 10. This particular section has not been used in either Illinois or Kentucky.

675. WIS. STAT. § 92.11(5)(a) (1981-1982). See *Vernon County Ordinance*, *supra* note 254, § 7.02 and WISCONSIN MODEL ORDINANCE, *supra* note 412, § 8.02 for the enforcement by injunction provisions. Both the *Vernon County Ordinance* and the *Wisconsin Model Ordinance* provide that the land-disturbing activity will cease and the permit will revoke for noncompliance with the regulations. *Vernon County Ordinance*, *supra* note 254, §§ 6.02(C), .03; WISCONSIN MODEL ORDINANCE, *supra* note 412, § 7.03(b). For the forfeiture provisions in the *Vernon County Ordinance* and the *Wisconsin Model Ordinance*, which provide for forfeitures of between \$10 and \$200 for each day of violation, see *Vernon County Ordinance*, *supra* note 254, § 7.01 and WISCONSIN MODEL ORDINANCE, *supra* note 412, § 8.01. Violators of local ordinances in Wisconsin are not subject to criminal sanctions; they are only subject to forfeitures. See *Vernon County Ordinance*, *supra* note 254, at § 7.0; WISCONSIN MODEL ORDINANCE, *supra* note 412, § 8.0.

676. STANDARD DISTRICTS LAW, *supra* note 12, § 10.

677. North Dakota had a provision similar to the Standard Districts Law when the state originally enacted its statute. See ch. 9, § 9, 1937 N.D. SESS. LAWS ____.

reasonable effort to contact the land owner or user in person at least one year before the county or land conservation committee can initiate an enforcement action.⁶⁷⁸ The land owner or user must be furnished with both an oral and a written explanation of the causes of the excessive soil erosion and of how the management plan that the committee intends to impose would reduce soil erosion to a rate established as acceptable by the land conservation committee.⁶⁷⁹ In addition, the land owner or user must be furnished with an explanation of available financial aids and technical assistance.⁶⁸⁰

Soil and water conservation district supervisors in Illinois,⁶⁸¹ Kentucky,⁶⁸² and North Dakota,⁶⁸³ and under the Standard Districts Law,⁶⁸⁴ may initiate a court action to compel land owners or occupiers to perform the necessary work, or to permit the supervisors to perform the work themselves, if they find that any provisions of the land use regulations are not being observed on particular lands, and that the nonobservance tends to increase erosion, runoff, sedimentation, and floodwater on those lands and is interfering with the prevention or control of erosion, runoff, sedimentation, and floodwater on other lands within the district. Such an action is to be initiated by the supervisors presenting a petition to the circuit court in the county in which the lands are located.⁶⁸⁵ The petition must set forth the ordinance prescribing the applicable land use regulations, the failure of the land owner or occupier to observe the regulations and to perform the particular work, operations, or avoidances as required by the regulations, and a statement that such nonobservance tends to increase erosion on the lands and is interfering with the prevention or control of erosion on other land within the district.⁶⁸⁶ Such a petition typically would seek a court order requiring the land owner or occupier to perform the required work, operations, or avoidances within a reasonable time, and giving the supervisors authority to enter the land to perform the work or other operations or to bring the condition of the land into conformity with the regulations, and to recover costs and expenses, with interest, from the land owner or occupier if he fails to perform.⁶⁸⁷

678. WIS. STAT. § 92.11(5)(b) (1981-1982).

679. *Id.* § 92.11(5)(b)(1)-(2). The management plan must, within reasonable limits, set forth all of the options available to achieve acceptable soil erosion rates. *Id.*

680. *Id.* § 92.11(b)(3). Aids and assistance may include "cost-sharing, loans, tax incentives and technical assistance available from the land conservation committee and other agencies." *Id.*

681. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983).

682. KY. REV. STAT. §§ 262.430, .440, .450 (1981).

683. N.D. CENT. CODE § 4-22-34 (1975).

684. STANDARD DISTRICTS LAW, *supra* note 12, § 11.

685. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. § 262.430(1) (1981); N.D. CENT. CODE § 4-22-34 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 11.

686. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. § 262.430 (1981); N.D. CENT. CODE § 4-22-34 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 11.

687. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. § 262.430(1) (1981); N.D.

After a hearing, the court may dismiss the petition or grant the relief sought.⁶⁸⁸ The court will retain jurisdiction until after the required work has been completed.⁶⁸⁹ If the land owner or occupier has failed to perform the necessary work or operations, and the district supervisors have entered and performed the work or operations, the court will enter a judgment for the district supervisors for the costs and expenses incurred, and for interest until the judgment is paid.⁶⁹⁰ The judgment becomes a lien against the landowner's property and will be collected along with the real estate taxes.⁶⁹¹

The soil and water conservation districts or the counties in Illinois,⁶⁹² Kentucky,⁶⁹³ North Dakota,⁶⁹⁴ and Wisconsin⁶⁹⁵ have adequate available enforcement powers over their land use regulations to permit such agencies to be regulatory agencies in a section 208 areawide water quality management plan.⁶⁹⁶ All of those states, except Wisconsin, can initiate an action asking the court to require the performance of conservation work or to permit the districts to perform the work.⁶⁹⁷ Illinois⁶⁹⁸ and Kentucky⁶⁹⁹ permit private actions for damages against violators, and Wisconsin⁷⁰⁰ permits the regulations to be enforced by injunction or forfeiture. Only the Nebraska statutes make no provisions for enforcement.

2. *Mandatory Regulatory Powers*

Enforcement authority varies in the five midwestern states with mandatory regulatory powers. Agricultural land in Illinois,⁷⁰¹ Iowa,⁷⁰² and South Dakota⁷⁰³ is deemed to comply with the soil erosion control regulations unless a complaint is made. Once a complaint has been filed, the soil

CENT. CODE § 4-22-34 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 11.

688. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. § 262.440 (1981); N.E. CENT. CODE § 4-22-34 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 11.

689. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. § 262.450 (1981); N.D. CENT. CODE § 4-22-34 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 11.

690. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. §§ 262.440, .450 (1981); N.D. CENT. CODE § 4-22-34 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 11.

691. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. § 262.450 (1981); N.D. CENT. CODE § 4-22-34 (1975); STANDARD DISTRICTS LAW, *supra* note 12, § 11.

692. See ILL. REV. STAT. ch. 5, § 129-30 (Supp. 1983).

693. See KY. REV. STAT. §§ 262.420, .430, .440, .450 (1981).

694. See N.D. CENT. CODE § 4-22-33 (1975).

695. See WIS. STAT. § 92.11(5) (1981-1982).

696. 33 U.S.C. § 1288 (1976 & Supp. V 1981).

697. ILL. REV. STAT. ch. 5, § 130 (Supp. 1983); KY. REV. STAT. §§ 262.430, .440, .450 (1981); N.D. CENT. CODE § 4-22-34 (1975).

698. ILL. REV. STAT. ch. 5, § 129 (Supp. 1983).

699. KY. REV. STAT. § 262.420(1) (1981).

700. WIS. STAT. § 92.11(5)(a) (1981-1982).

701. See ILL. REV. STAT. ch. 5, §§ 138.6, .8 (Supp. 1983).

702. See IOWA CODE § 467A.47 (1983).

703. S.D. CODIFIED LAWS ANN. §§ 38-8A-17 to -18, -20 (1977).

and water conservation districts are responsible for providing at least the initial phases of the enforcement process.⁷⁰⁴ Enforcement is provided in Michigan by the counties, by the local enforcing agencies, and by a state agency.⁷⁰⁵ There are no enforcement provisions in the Ohio statutes for the agricultural or urban pollution rules.

Any person in Illinois engaging in land-disturbing activities is encouraged to comply with the soil and water conservation district standards for erosion and sediment control.⁷⁰⁶ Complaints may be filed with the soil and water conservation district by any person, by the district itself, or by the Illinois Department of Agriculture, if they believe that a serious erosion or sedimentation problem exists.⁷⁰⁷ Complaint forms, which are provided by the state Department of Agriculture, or by the districts,⁷⁰⁸ require, among other things, the location of the land involved and a description of the nature and extent of damage.⁷⁰⁹ The district, after receiving the complaint, must notify the land owner or occupier that a complaint has been filed, and must investigate to determine whether there has been a violation of the standards.⁷¹⁰ If the district determines that there has been a violation of the standards, it must then notify the land owner or occupier and seek voluntary compliance.⁷¹¹ The notice of determination of violation by the district contains a deadline for compliance and suggests modifications, practices, procedures, terms, and conditions enabling the person with erosion problems to comply with the standards.⁷¹²

A person found to be in violation of the soil erosion and sedimentation control program and standards has one year from the day of the determination notice to enter into a compliance schedule.⁷¹³ If a schedule for compliance has not been entered into within one year, the district board must hold a formal hearing to determine the reasons for noncompliance.⁷¹⁴ The findings of the district board are published and are made available to the Illinois Department of Agriculture.⁷¹⁵ The Department of Agriculture then reviews the complaint and the district's findings and may, if in its opinion a violation exists, hold a formal hearing to determine why the standards are not

704. ILL. REV. STAT. ch. 5, § 138.5 (Supp. 1983); IOWA CODE § 467A.47 (1983); S.D. CODIFIED LAWS ANN. § 38-8A-20 (1977).

705. MICH. COMP. LAWS §§ 262.106, .108-.114 (1979 & Supp. 1983-1984).

706. ILL. REV. STAT. ch. 5, § 138.5 (Supp. 1983).

707. *Id.* ch. 5, § 138.8; ILLINOIS EROSION & SEDIMENT GUIDELINES, *supra* note 283, R. 12.1-.2.

708. ILL. REV. STAT. ch. 5, § 138.8 (Supp. 1983).

709. ILLINOIS EROSION & SEDIMENT CONTROL GUIDELINES, *supra* note 283, R. 12.3(C)-(D).

710. ILL. REV. STAT. ch. 5, § 138.8 (Supp. 1983).

711. ILL. REV. STAT. ch. 5, § 138.8 (Supp. 1983); ILLINOIS EROSION & SEDIMENT GUIDELINES, *supra* note 283, R. 12.4.

712. ILLINOIS EROSION & SEDIMENT GUIDELINES, *supra* note 283, R. 12.5.

713. ILL. REV. STAT. ch. 5, § 138.8 (Supp. 1983).

714. *Id.*

715. *Id.*

being observed.⁷¹⁶ The Department of Agriculture's findings are published, and an attempt is made to solve the problem.⁷¹⁷ Land owners or occupiers can appeal any final determination by either the district or the Department to the courts.⁷¹⁸

Landowners in Iowa are required to employ either soil and water conservation practices or erosion control practices.⁷¹⁹ Soil conservation district commissioners must inspect land within the district upon receipt of a complaint⁷²⁰ alleging that sediment from soil erosion in excess of the limits established by the district's soil erosion control regulations is damaging the complainant/owner's or occupier's land.⁷²¹ If the commissioners find that sediment damages are occurring to the property owned or occupied by the person filing the complaint, and that excessive soil erosion is occurring on the land complained of, they are required to issue an administrative order to the violator and deliver it by personal service or certified mail.⁷²² The administrative order must state as nearly as possible the extent to which soil erosion exceeds the district's soil loss regulations.⁷²³

The Iowa statutes provide that if the erosion is occurring on the site of a construction project or similar undertaking which involves the removal of all, or of a major portion, of the vegetation or other natural or man-made cover, thereby exposing bare soil directly to water or wind, the administrative order must state a time of not more than five days after service of the administrative order within which the work necessary to establish or maintain erosion control practices must be commenced.⁷²⁴ The administrative order must also establish a time within thirty days when the work is to be satisfactorily completed.⁷²⁵ In cases of agricultural land, the order must state a time of not more than six months after the service of the order in which the work needed to establish or maintain the necessary soil and water conservation practices or erosion control measures must be commenced, and a time within one year within which the work is to be satisfactorily completed, unless the requirements of the order are superseded by the lack of public

716. *Id.*

717. *Id.*; ILLINOIS EROSION & SEDIMENT GUIDELINES, *supra* note 283, R. 13.1-.2.

718. *Id.* ch. 5, § 138.9.

719. IOWA CODE § 467A.44(3) (1983). District commissioners, however, may not specify the particular practices to be employed so long as the owners voluntarily comply with the applicable soil loss limits established for the district. *Id.* § 467A.44(3)(a). See *id.* § 467A.43, which provides that it is the duty of landowners to establish and maintain soil and water conservation practices or erosion control practices as required by the soil conservation district board of commissioners to conserve the fertility, general usefulness, and value of the soil and soil resources of the state.

720. The complaint must be written and signed. *Id.* § 467A.47.

721. *Id.*

722. *Id.*

723. *Id.*

724. *Id.* § 467A.47(1).

725. *Id.*

cost-sharing funds.⁷²⁶ Once the district is informed that the land owner's or occupier's application for cost-sharing has been approved, the district must issue a supplemental order stating that the work must begin within six months of the date of approval and must be completed within one year.⁷²⁷

The commissioners may petition the district court for a court order requiring immediate compliance with the soil conservation district's previously issued administrative order if the work has not been initiated or satisfactorily completed by the dates specified in the administrative order, or has not been performed with due diligence, or if the work done did not reduce soil erosion from the land below the limits established by the regulations when completed, or if the land owners or occupants have advised the district commissioners that they do not intend to perform the work.⁷²⁸ The burden of proof in the district court is upon the district commissioners to show that soil erosion in excess of the applicable soil loss limits is in fact occurring, and that the land owner or occupier has failed to establish or maintain soil and water conservation practices or erosion control measures that comply with the district's regulations.⁷²⁹ The court may modify the district's administrative order.⁷³⁰ Land owners or occupiers who fail to comply with the court order are deemed in contempt of court and may be punished accordingly.⁷³¹ District courts may imprison persons held in contempt of court for up to six months or fine them up to \$500.⁷³²

Persons engaged in agricultural or minor land-disturbing activities in South Dakota are not required to prepare a plan, file an application, or secure a permit⁷³³ unless the conservation district determines that the land-disturber is violating the adopted district standards.⁷³⁴ Once such a violation has been determined, the land disturber is required to prepare an erosion and sediment control plan within six months, to have it approved by the district, and to implement it within six months after approval.⁷³⁵ Any person adversely affected by land-disturbing activities may file a petition with the district or with the permit-issuing authority alleging a violation of district standards.⁷³⁶ After filing the petition, the district or the permit-issuing authority must investigate its validity, take appropriate action, and advise the

726. *Id.* § 467A.47(2). See *id.* § 467A.48 for the requirement that cost-sharing must be available before the land use regulations may be enforced.

727. *Id.* § 467A.48.

728. *Id.* § 467A.49(1)-(3).

729. *Id.* § 467.50.

730. *Id.*

731. *Id.*

732. *Id.* § 665.4(2).

733. S.D. CODIFIED LAWS ANN. § 38-8A-17 (1977).

734. *Id.* § 38-8A-18.

735. *Id.*

736. *Id.* § 38-8A-20.

petitioner of the disposition of his petition within two months.⁷³⁷ Either the district or the permit-issuing authority may, upon petition or of its own volition, commence a court action for an injunction or for other appropriate relief to enforce their orders.⁷³⁸

Michigan county agencies are responsible for enforcing state land use regulations, except within a city, a village, or a charter township that has land use ordinances similar to the state regulations, or with regard to land uses of authorized public agencies.⁷³⁹ Persons undertaking land use changes or earth-disturbing activities must do so in accordance with the state regulations or local ordinances and must obtain a permit from the appropriate county or local enforcing agency.⁷⁴⁰ Those failing to do so may be found guilty of a misdemeanor.⁷⁴¹

County or local enforcing agencies must notify the Michigan Water Resources Commission of all determined violations of state regulations or local land use ordinances.⁷⁴² When the Commission determines that violations have occurred, the Commission must notify the offenders, informing them of the specific violations and of the hearing dates, and providing them with an appropriate agreement to assure timely correction of the violations.⁷⁴³ If the offenders agree to abide by the proposed agreement and notify the Commission of that fact before the hearing, disposition of the matter may be made, with the Commission's approval, by stipulations or consent orders without further hearings.⁷⁴⁴ If the offenders do not agree to conform to the commission's proposed agreements, hearings are held and final orders are issued.⁷⁴⁵ Such orders will be enforced by the courts.⁷⁴⁶

Two other enforcement methods are available in Michigan. The Water Resources Commission, or the county or local enforcing agency, may initiate a court action seeking an injunction to restrain or prevent violations of the state regulations or local ordinances.⁷⁴⁷ In addition, county or local enforcing agencies may issue cease-and-desist orders and revoke a permit upon finding a violation of the regulations, of the local ordinance, of the permit, or of an approved soil erosion and sedimentation control plan.⁷⁴⁸

737. *Id.*

738. *Id.* § 38-8A-21.

739. MICH. COMP. LAWS § 282.106(1) (1979). The county board of commissioners designates by resolution a county agency as the county enforcing agency. *Id.* § 282.106(2).

740. MICH. ADMIN. CODE R. 323.1704-.1707 (1981).

741. MICH. COMP. LAWS § 282.113(1) (1979).

742. *Id.* § 282.108.

743. *Id.*

744. *Id.* § 282.113(2).

745. *Id.*

746. *Id.* Any party involved has 15 days after issuance to appeal the final order for a judicial decision. *Id.*

747. *Id.* § 282.114(1).

748. MICH. ADMIN. CODE R. 232.1712 (1981).

The statutes giving the Ohio Division of Soil and Water Districts authority to adopt rules for agricultural pollution and urban sediment pollution abatement do not provide enforcement powers.⁷⁴⁹ If, however, the soil and water conservation districts receive complaints alleging violations of the standards, they will attempt to find a solution through voluntary cooperation.⁷⁵⁰ The Ohio statutes do give the Division responsibility for establishing procedures to enforce the rules for animal waste management.⁷⁵¹ Upon receipt of a complaint filed with the division alleging that a concentrated animal feeding operation is not in compliance with the standards for animal waste pollution abatement, the soil and water conservation districts will attempt to reach a voluntary, cooperative corrective solution with the operator.⁷⁵² If a voluntary solution cannot be reached, the district must file a report with the Division of Soil and Water Districts, which after a hearing, will issue an order.⁷⁵³ Persons failing to comply with a division order may be prosecuted and found guilty of a misdemeanor.⁷⁵⁴

Soil and water conservation districts are involved in the enforcement methods in all five midwestern states with mandatory regulatory powers except Michigan.⁷⁵⁵ Soil erosion control in Illinois⁷⁵⁶ and Ohio⁷⁵⁷ is voluntary, however, as there are no means for enforcing violations of the standards except through cooperative efforts. Only in Iowa⁷⁵⁸ and South Dakota⁷⁵⁹ do soil and water conservation districts meet the regulatory agency requirements of a section 208 areawide water quality management plan⁷⁶⁰ from an enforcement standpoint. Conservation districts in South Dakota are only basically involved in the initial enforcement process.⁷⁶¹

749. See OHIO REV. CODE ANN. §§ 1511.02(E)(1)-(3) (Page Supp. 1982).

750. See Ohio Agricultural Rules, *supra* note 316, R. 1501:15-3-09(B)-(D) (codified at OHIO ADMIN. CODE §§ 1501:15-3-09(B)-(D) (1980)).

751. OHIO REV. CODE ANN. § 1511.02(E)(5) (Page Supp. 1982). See Ohio Animal Waste Rules, *supra* note 318 (codified at OHIO ADMIN. CODE ch. 1501:15-5 (1980)).

752. Ohio Animal Waste Rules, *supra* note 318, R. 1501:15-5-10(D)(1)-(3) (codified at OHIO ADMIN. CODE §§ 1501:15-5-10(D)(1)-(3) (1980)).

753. OHIO REV. CODE ANN. § 1511.02(H) (Page Supp. 1982); Ohio Animal Waste Rules, *supra* note 318, R. 1501:15-5-10(D)(4), (E) (codified at OHIO ADMIN. CODE §§ 1501:15-5-10(D)(4), (E) (1980)).

754. OHIO REV. CODE ANN. §§ 1511.07, .99 (Page Supp. 1982).

755. See ILL. REV. STAT. ch. 5, §§ 129-30, 138.8 (Supp. 1983); IOWA CODE §§ 467A.42-61 (1983); OHIO REV. CODE ANN. §§ 1511.05, .07 (Page Supp. 1982); S.D. CODIFIED LAWS ANN. §§ 38-8A-14, -21 (1977).

756. See ILL. REV. STAT. ch. 5, § 138.8 (Supp. 1983).

757. OHIO REV. CODE ANN. § 1511.05 (Page Supp. 1982).

758. See IOWA CODE §§ 467A.42-61 (1983).

759. See S.D. CODIFIED LAWS ANN. § 38-8A-21 (1977).

760. See 33 U.S.C. § 1288 (1976 & Supp. V 1981).

761. S.D. CODIFIED LAWS ANN. § 38-8A-21 (1977).

G. Cost-Sharing Requirements

Statutes making the availability of cost-sharing funds a prerequisite to enforcing land use regulations can possibly negate the effectiveness of such regulations. There are no cost-sharing requirements in the five midwestern states following the Standard Districts Law.⁷⁶² The Wisconsin Model Ordinance, however, provides that a conservation plan need not be implemented on agricultural, forestry, or conservancy lands, unless cost-sharing assistance is available for the installation of structural measures.⁷⁶³ The same provision is contained in the Vernon County Ordinance.⁷⁶⁴

Of the five midwestern states with mandatory regulatory powers, the availability of cost-sharing funds is only a prerequisite to enforcing the land use regulations in Iowa⁷⁶⁵ and to enforcing the animal waste management rules in Ohio.⁷⁶⁶ Cost-sharing funding is provided for in both the Illinois⁷⁶⁷ and South Dakota⁷⁶⁸ statutes, but such funds are not made a prerequisite for enforcement. The Michigan statutes are silent on cost-sharing funds.⁷⁶⁹

Owners and occupants of land in Iowa are not required to establish any new permanent or temporary soil and water conservation practices unless public or other cost-sharing funds have been specifically approved for the land and are actually made available.⁷⁷⁰ The cost-sharing funds must be in an amount equal to seventy-five percent of the cost of permanent practices, or in an amount set by the State Soil Conservation Committee for temporary practices.⁷⁷¹

The Ohio Division of Soil and Water Districts is responsible for specifying which pollution abatement practices are eligible for cost-sharing, and for determining conditions for eligibility, construction standards and specifications, maintenance requirements, and limits of cost-sharing for such practices.⁷⁷² Orders may not be issued for violating the animal waste management rules if the order requires a pollution abatement practice that is eligible for cost-sharing and if public cost-sharing funds are not available in an amount of at least seventy-five percent of the cost, up to a maximum of \$5,000 per person.⁷⁷³

762. Illinois, Kentucky, Nebraska, North Dakota, and Wisconsin.

763. WISCONSIN MODEL ORDINANCE, *supra* note 412, § 3.02(c)(1)(bb).

764. Vernon County Ordinance, *supra* note 254, § 3.01(b)(3)(cc).

765. IOWA CODE § 467A.48 (1983).

766. Ohio Animal Waste Rules, *supra* note 318, R. 1501:15-5-08 (codified at OHIO ADMIN. CODE § 1501:15-5-08 (1980)).

767. ILL. REV. STAT. ch. 5, § 138.6 (Supp. 1983).

768. S.D. CODIFIED LAWS ANN. § 38-8A-63 (1977).

769. See MICH. COMP. LAWS §§ 282.101-.117 (1979 & Supp. 1983-1984).

770. IOWA CODE § 467A.48 (1983).

771. *Id.*

772. OHIO REV. CODE ANN. § 1511.02(E)(6) (Page Supp. 1982).

773. *Id.* § 1511.02(I).

VII. SUMMARY AND CONCLUSIONS

Section 208 of the Clean Water Act of 1977 requires that agricultural and silvicultural sources of nonpoint pollutants be identified, and that procedures and methods, including land use requirements, be developed to control pollution from those sources. In addition, local agencies with regulatory powers must be designated to implement the areawide water quality management plans. The purpose of this article was to evaluate the regulatory powers available to soil and water conservation districts in the thirteen midwestern states to determine the districts' effectiveness in abating nonpoint source pollutants in both rural and urban areas through land use regulation, and to evaluate districts as possible management agencies for implementing the section 208 areawide water quality management plans.

All thirteen midwestern states have soil and water conservation districts or similar local governmental units. Districts in nine states either possess, or are involved with, some type of nonpoint source pollution regulatory power, while the legislatures in four states (Indiana, Kansas, Minnesota, and Missouri) have either repealed the district regulatory powers or never adopted them. Lacking the necessary regulatory powers, the soil and water conservation districts could not be designated as the local management agencies for implementing the section 208 areawide water quality management plans in those four states. The regulatory powers of districts in four states (Kentucky, Nebraska, North Dakota, and Wisconsin) are permissive in nature, and are based on the regulatory powers proposed in the Standard Districts Law. Four other states (Iowa, Michigan, Ohio, and South Dakota) now have mandatory land use regulations based on soil loss limits, conservation standards, and land-disturbing activities. The Illinois statutes give districts permissive land use regulatory powers, but also provide for mandatory powers to establish conservation standards for land-disturbing activities.

The effectiveness of soil and water conservation districts providing regulatory powers to abate nonpoint source pollutants, thereby permitting districts to become viable local management agencies for implementing section 208 areawide water quality management plans, is dependent on many factors. Effectiveness depends on the ease of adopting land use regulations, the conservation practices and methods that may be included in land use regulations, the administration procedures, the enforcement procedures, and the cost-sharing requirements prerequisite to enforcing the regulations. All of these elements must be present for a state to have an effective soil and water conservation district regulatory program. A district regulatory program will not be effective, for example, in a state where the necessary regulations are almost impossible to adopt, or where the statutes will not permit enforcement.

Adopting land use regulations in those states with permissive regulatory powers patterned after the Standard Districts Law is a long and difficult process. Wisconsin's statutes requiring the approval of proposed land use

regulations by a very high percentage of eligible voters by referendum prior to the adoption of such regulations by the district, or prior to their becoming effective, make the adoption of such regulations almost impossible. It is a little easier to adopt regulations in Wisconsin where only a majority vote on a referendum is required to make the county land use ordinance effective.

Land use regulations may apply to incorporated areas in Illinois, Kentucky, Nebraska, and Wisconsin. However, incorporated areas in Illinois had an option to withdraw from district jurisdiction, and district regulations in Nebraska must not conflict with municipal, county, or regional land use regulations.

The enabling legislation in all of the five states with permissive regulatory powers (Illinois, Kentucky, Nebraska, North Dakota, and Wisconsin) permits districts to include adequate conservation practices and measures in their land use regulations to control soil erosion on agricultural land. Wisconsin's new legislation provides it the weakest of such mandates.

None of the permissive regulatory states specify who is to administer land use regulations or how they are to be administered. All of the five states with regulations patterned after the Standard Districts Law, except Nebraska, provide for enforcement powers. These powers include the authority to make inspections, to recover damages against violators, to impose injunctions, fines, and forfeitures, and to perform work if land owners or occupiers fail to perform.

The availability of cost-sharing funds is not a prerequisite for performance under the land use regulations in any of the midwestern states with permissive regulatory powers, however, no state prevents a district from inserting such a provision into its ordinance.

Wisconsin is the only state with permissive regulatory powers in which soil and water conservation districts can realistically adopt land use regulations and use districts as management agencies to implement section 208 areawide water quality management plans. A favorable vote by too high a percentage of eligible voters in a referendum on the question of whether a proposed regulation should be adopted is needed in the other states to realistically expect that land use regulations can be adopted. The primary drawback to the Wisconsin method, however, is the lack of erosion control practices and measures that are permitted to be regulated by land use regulations. Coverage of conservation practices that may be included in the four other states' land use regulations are too narrow for a regulatory agency to implement an areawide water quality management plan.

Enforcement provisions in four of the states with permissive regulatory powers are adequate. One state, Nebraska, does not have any enforcement provisions. Statutes in all five states fail to set forth procedures for administering the regulations.

State administrative agencies in states with mandatory regulatory powers based on soil loss limits, conservation standards, and land-disturbing ac-

tivities (Illinois, Iowa, Michigan, Ohio, and South Dakota) have more authority in the nonpoint source pollution control process than do the state administrative agencies in the states with regulations based on the proposed Standard Districts Law. The state statutes providing for the establishment of land use regulations fall into three categories: (1) districts required to adopt regulations and to have the regulations approved by a state agency (Iowa); (2) districts required to adopt conservation standards and regulations based on the state agencies' programs and guidelines (Illinois and South Dakota); and (3) state agencies required to adopt statewide soil erosion and sedimentation control programs and regulations that are administered and enforced by state and local agencies (Michigan and Ohio).

Land use regulations apply to both incorporated and unincorporated areas in all five states. However, incorporated areas in Illinois had until January 1, 1980 to withdraw from the districts, and the statewide land use regulations do not apply to incorporated areas in Michigan and Ohio if such areas have their own land use regulations. Conservation practices and methods which may be mandated by the regulations are based on soil loss limits, conservation standards, and land-disturbing activities, and they apply to both agricultural and nonagricultural uses of land.

Only in Illinois, Iowa, and South Dakota are soil and water conservation districts responsible for administering the land use regulations. Permits are required for land-disturbing activities in Michigan and South Dakota. Agricultural land in Illinois, Iowa, and South Dakota is deemed to comply with the regulations unless a complaint is made, and then the districts provide for the enforcement of the regulations. Counties and a state agency provide the enforcement in Michigan, and there are no enforcement provisions in Ohio for either the agricultural or urban pollution control rules. The availability of cost-sharing funds is a prerequisite for enforcement in Iowa.

Only the districts in Illinois, Iowa, and South Dakota have sufficient powers to be considered as management agencies to implement the section 208 areawide water quality management plan, as the state agencies or the counties are responsible for administering the land use regulations in Michigan and Ohio, and the soil and water conservation districts have very little to do with enforcing or promulgating the regulations. There are also no provisions for the enforcement of land use regulations in Ohio. Provisions in the Illinois, Iowa, and South Dakota statutes, however, weaken the soil and water conservation district land use regulations. For example, district commissioners in Iowa may not require the employment of erosion control practices on land used in good faith for only agricultural or horticultural purposes and some portions of the regulations may not be enforced unless cost-sharing funds are available.