

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Justin Novak, Field Representative
SUBJECT: Probable Violation of Erosion and Sediment Control Rules and Regulations
DATE: November 26, 2019

On November 21, 2019 two Erosion & Sediment complaints were submitted by Baird Holm LLP on behalf of (A) Mark Ondracek (3476 Golden Eagle Circle) and (B) Rod Scheer (3510 Golden Eagle Circle) Blair, NE; Section 19-Township 17N-Range 12E), against Michael Cornwell (Farm 5696 Tract 4434, 65.7 acres) for excessive sediment being deposited on their property. Mr. Cornwell was notified of the complaint, and a field review was completed on November 25, 2019 with Michael & Todd Cornwell, Justin Novak (NRD) and Terry Schumacher (NRD).

The NRD was originally contacted by Mark Ondracek in 2018 about excessive sediment being deposited on his property along with Rod Scheer's. During the initial review of the field in 2018, there were no terraces, deeply incised ditches, and was being farmed up and down the hill. Working with the NRCS a conservation plan was developed to get Mr. Cornwell below his allowable soil loss, that included constructing terraces, no-till and contour farming. Construction of the terraces was completed in April 2019.

After a field review this fall, it was determined that the continued sediment damage Mr. Ondracek and Mr. Scheer are receiving is due to the failure of the terraces systems constructed last spring. The pictures the District received from Mr. Ondracek show that on September 19th he started to see excessive sediment being deposited on his property, this correlates with the 6.7" of rain recorded at the Blair Airport on that day. The NRD and the NRCS believe this is the reason for the failure, as terraces are designed to handle 4.26" of rain in a 24hr period.

In the farms current state, Mr. Cornwell is not meeting the NRCS's allowable soil loss due to non-functioning terraces.

Under the District's Rules, there are 4 options that the Committee can take action upon:

- A) If the staff and committee determine that no violation of these rules and regulations has occurred, it shall recommend and the Board may approve dismissal of the complaint. The complainant shall be given the opportunity to appear before the entire Board before the Board acts on the recommendation.
- B) If the committee 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, it shall recommend and the Board may approve dismissal of the complaint.
- C) If the committee determines that the land which is identified in the complaint is being used for non-agricultural purposes, and is under an erosion and sediment control plan that has been approved by the District, is in conformance with any NPDES (National Pollution Discharge Elimination System) permit issued by the Nebraska Department of Environmental Quality (NDEQ), or any political subdivision of the state designated by NDEQ to issue such permits, it shall recommend and the Board may approve dismissal of the complaint.
- D) If the committee determines that a probable violation of these rules and regulations has occurred, it shall proceed in accordance with Rule 12.

It is staff's recommendation that the Subcommittee review and recommend to the Board that the Papio-Missouri River NRD find Mr. Cornwell to be in probable violation (Option D) of the District's Erosion & Sediment Rules & Regulations.