

FISCAL CODE - OMNIBUS AMENDMENTS AND RELATED REPEALS

Act of Jul. 11,
2022, P.L. 540, No.
54
Session of 2022
No. 2022-54

Cl. 72

ARTICLE XVI-R

AGRICULTURE CONSERVATION ASSISTANCE PROGRAM

Section 1601-R. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural erosion and sediment control plan." A site-specific plan identifying BMPs to minimize accelerated erosion and sedimentation from agricultural runoff required by 25 Pa. Code Ch. 102 (relating to erosion and sediment control).

"Agricultural operation." The management and use of farming resources for production of crops, livestock or poultry.

"Agriculturally impaired stream miles." Stream miles that are designated impaired due to the identified source being agriculture as defined by the most recent Pennsylvania Integrated Water Quality Monitoring and Assessment Report by the Department of Environmental Protection.

"Animal concentration areas." The following:

(1) Barnyards, feedlots, loafing areas, exercise lots or other similar animal confinement areas that will not maintain a growing crop or where deposited manure nitrogen is in excess of crop needs.

(2) The term does not include:

(i) Areas managed as pastures or other cropland.

(ii) Pasture access ways, if they do not cause direct flow of nutrients to surface water or groundwater.

"Best management practice" or "BMP." A practice or combination of practices determined by the commission or United States Department of Agriculture Natural Resources Conservation Service to be effective and practical, considering technological, economic and institutional factors, to manage nutrients and sediment to protect surface water and groundwater.

"Commission." The State Conservation Commission.

"Conservation district." A county conservation district established under the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

"Conservation plan." A United States Department of Agriculture Natural Resources Conservation Service Plan, including a schedule for implementation, that identifies site specific conservation best management practices on an agricultural operation.

"Cropland acres." The acres of land used to produce adapted crops for harvest, which includes both cultivated and noncultivated crops and areas managed for forage production that are harvested by livestock, or a combination of livestock and mechanical harvesting.

"Eligible applicant." Any person or other legal entity that has legal or financial responsibility for one of the following:

(1) the agricultural operation in which they are engaged; or

(2) property on which an agricultural operation takes place.

"Erosion." The natural process by which the surface of the land is worn away by water, wind or chemical action.

"Livestock." Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation. The term does not include aquatic species.

"Manure management plan." A plan developed and implemented in accordance with 25 Pa. Code Ch. 91 (relating to general provisions).

"Nutrient." A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, biosolids or combinations thereof.

"Nutrient management plan." A written site-specific plan which incorporates BMPs to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in 3 Pa.C.S. §§ 504 (relating to powers and duties of commission) and 506 (relating to nutrient management plans).

"Poultry." Birds raised, fed or maintained on an agricultural operation with the purpose of generating income.

"Program." The Agriculture Conservation Assistance Program established under this article.

"Sediment." Soils or other erodible materials transported by storm water as a product of erosion.

"Surface waters." Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries. The term does not include water at facilities approved for wastewater treatment, such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

"Technical assistance." Advice, technical expertise, information, training and tools provided to a landowner, commission, conservation district or others regarding program implementation, including, but not limited to, the proper planning, design and installation of best management practices.

"Watershed implementation plan." A plan created to achieve water quality improvement goals within a watershed of this Commonwealth, including, but not limited to, Chesapeake Bay Watershed implementation plans, county action plans or other watershed-based restoration and implementation plans.

Section 1602-R. Establishment.

The Agriculture Conservation Assistance Program is established in the commission.

Section 1603-R. Sources of funding.

Funding for the program may be provided through any of the following:

- (1) Money appropriated for purposes of the program.
- (2) Amounts made available from the Clean Streams Fund under section 1712-A.2(c)(1).
- (3) Federal money appropriated or authorized for purposes of the program.
- (4) Money received from another governmental agency through an interagency agreement or memorandum of understanding.
- (5) A gift or other contribution from a public or private source.
- (6) Return on money dedicated for the program, including interest on loans, investment interest or refunds.

Section 1604-R. Powers, duties and administration.

(a) **Administration.**--The commission may dedicate up to 4% of the funds allocated under section 1603-R for expenses incurred in administration of the program. Up to 4% of the funds provided under section 1603-R may be committed by the commission to compensate the entities performing the administrative tasks and activities under subsection (c).

(b) **Powers and duties of commission.**--The commission shall:

- (1) Adopt guidelines and criteria for:
 - (i) Administration and oversight of the program.

- (ii) Best management practices to be implemented and receive funding under the program.
- (2) Provide a system of program evaluation and quality control.
- (3) Develop a training, education and technical assistance program for technicians, engineers and other individuals performing work under the program.
- (4) Designate or adopt a system for collecting and reporting of collected data on funded practices to governmental agencies, in a manner consistent with criteria established under Federal and State laws.
- (c) Delegation of powers and duties.--In performance of its powers and duties, the commission may delegate to conservation districts, The Pennsylvania State University, or other entity determined appropriate by the commission, certain duties and responsibilities necessary to carry out the program.
- (d) Apportionment criteria.--The commission shall apportion the funds under section 1603-R to participating conservation districts based on written apportionment criteria developed by the commission to establish priorities based on preventing nutrient and sediment pollution. The following shall apply:
 - (1) The apportionment criteria shall consider:
 - (i) Agriculturally impaired stream miles.
 - (ii) The number of cropland acres.
 - (iii) The number of farms.
 - (iv) The number of livestock and poultry.
 - (v) Other criteria as established by the commission.
 - (2) Any apportioned funds that are not used in any fiscal year may roll over for the following fiscal year. Any unused apportioned funds after two years shall be reapportioned to participating conservation districts in the following year, consistent with the apportionment criteria prescribed under paragraph (1).
 - (e) Powers and duties of participating conservation districts.--The following shall apply:
 - (1) Each conservation district participating in the program shall manage and administer funds apportioned by the commission in a manner consistent with this article and the guidelines established by the commission. Each participating conservation district shall enter into an agreement with the commission to establish the administrative responsibilities and activities to be performed by the conservation district.
 - (2) Funds apportioned to a participating conservation district shall be used for:

(i) Approving and providing financial assistance to an eligible applicant to install and implement BMPs, consistent with the criteria for approval of projects provided under subsection (h) .

(ii) Costs for technical training and education and technical assistance in administration of projects approved by the conservation district, including technical assistance provided by the Pennsylvania Fish and Boat Commission and third parties in accordance with the provisions of subsection (b) (3) .

(iii) Establishment of procedures for submission and approval of applications for financial assistance for BMPs that minimize, to the extent feasible, procedural tasks and obligations for applicants.

(iv) Adoption of written criteria for ranking of applications for financial assistance and determination of proposed projects to be given priority.

(v) Entering into written agreements with recipients of approved funding.

(vi) Administration and procedures to ensure recipients of financial assistance timely complete projects in a manner that meets established design and construction standards.

(vii) Adoption of procedures to ensure that recipients of the approved funding will fully comply with requirements for future maintenance activities established under the terms of agreement.

(viii) Development of procedures to ensure proper performance of agreements executed under the program.

(ix) Other duties and responsibilities necessary to carry out the purposes of this chapter.

(3) A participating district may dedicate up to 6% of the annual amount apportioned by the commission under subsection (d) for expenses incurred in administration of the program. For purposes of this paragraph, expenses for technical assistance under subsection (e) (2) (ii) shall not be considered as expenses incurred in administration of the program.

(f) Advisory committee.--Within a conservation district, a committee may be appointed by the conservation district board to advise the program and identify local priorities and opportunities to complement other programs. The committee shall include, at a minimum, one staff member of the conservation district and one local representative of the United States Department of Agriculture Natural Resources Conservation Service and may include up to three other local representatives who are knowledgeable of agricultural operations and conservation.

(g) Applications and certifications.--The following shall apply:

(1) In a county with a delegated conservation district, an eligible applicant may apply to the delegated conservation district for an eligible project under the program. In a county without a participating delegated conservation district, an eligible applicant may apply directly to the commission for an eligible project under the program. The conservation district and commission shall prescribe the respective form and manner of the application. The application, at a minimum, shall include:

(i) The location of the project.

(ii) The description of the project, including the planned BMPs.

(iii) If applicable, the amount and sources of funding available for the project.

(iv) The total cost of the project.

(v) Any other information as required by the conservation district or commission, as applicable.

(vi) Relevance of the project to the development, improvement or implementation of the applicant's manure or nutrient management plan, conservation plan or agricultural erosion and sediment control plan.

(2) The conservation district or commission, as applicable, shall review complete applications based upon the criteria established under subsection (h) on an ongoing basis and in the order received. Within 90 days of receipt of a complete application, unless extenuating circumstances prevent the conservation district or commission from doing so, the conservation district or commission, as applicable, shall notify the applicant of:

(i) Whether the project is approved for funding under the program.

(ii) The total amount of funds approved for the project.

(iii) The amount of each type of funding approved for the project.

(3) Upon completion of a project funded under this program, the eligible applicant who received the approval for the project shall notify the conservation district or commission, as applicable, of the completion of the project and shall submit all documents to certify the completion.

(4) Projects funded under this program may be subject to inspection by the commission, conservation district or their designated agent.

(5) The funds shall be distributed upon certification and verification that the funded project has been completed and design and construction standards have been met.

(h) Criteria for evaluation of applications.--In approving applications for eligible projects under the program, the applicable delegated conservation district or commission shall give priority to complete applications based upon the following criteria:

(1) The project meets the goals of any applicable watershed implementation plan or county action plan.

(2) If applicable to the agricultural operation, the applicant has a conservation plan or agricultural erosion and sediment control plan and a manure management plan or nutrient management plan. Development of such plans shall be included in the application if not yet developed prior to the application.

(3) The project implements best management practices included in a conservation plan, agricultural erosion and sediment control plan, manure management plan or nutrient management plan. For purposes of this paragraph, the conservation district or commission shall give priority to projects that implement best management practices for control of nitrogen or phosphorus or sediment.

(4) An agricultural operation with an animal concentration area shall have implemented best management practices necessary to abate storm water runoff, loss of sediment, loss of nutrients and runoff of other pollutants from the animal concentration area, or the implementation of such best management practices shall be included in an application for funds.

(5) Proximity to surface waters, public drinking water sources or karst geology with underground drainage systems or open sinkholes.

(6) The project meets the design and construction standards established by the commission. If standards do not exist for a best management practice approved by the commission, the commission may establish or approve design, construction and certification standards for such a best management practice.

(7) Any other criteria considered by the conservation district, as applicable, and approved by the commission.

(i) Liability for failure of performance.--An eligible applicant receiving funds under an approved project who fails to adequately perform any term of the agreement executed for the project shall be liable for repayment of money provided to the eligible applicant related to adequate performance of the agreement term. The commission or its designated agent may take

action to enforce the terms of the agreement with the eligible applicant under agreement with the commission or its designated agent in law or equity to compel adequate performance of a project agreement or recoup funds provided under an approved project for which the recipient is liable for repayment under this article. Any funds repaid to the commission as a result of failure of performance of a project agreement may be provided to the conservation district that was party to that project agreement for use in other project agreements.

(j) Reports.--The commission shall perform a periodic program assessment, develop an annual report and provide the report to:

(1) The chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the Senate.

(2) The chairperson and minority chairperson of the Agriculture and Rural Affairs Committee of the House of Representatives.

(3) The chairperson and minority chairperson of the Environmental Resources and Energy Committee of the Senate.

(4) The chairperson and minority chairperson of the Environmental Resources and Energy Committee of the House of Representatives.