

#### **416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.**

RELATES TO: KRS 146.080- 146.115, 224.71-100-224.71-140, 262.010 – 262.660

STATUTORY AUTHORITY: KRS 146.110-146.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 through 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund, which provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for purposes such as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

##### **Section 1. Definitions.**

- (1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as tobacco, corn, soybeans, small grains, fruit, and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.
- (2) "Agriculture water quality plan" is defined by KRS 224.71-100(10).
- (3) "Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substance emitted by animals (including any form of livestock, poultry, or fish). This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.
- (4) "Applicant" means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.
- (5) "Available funds" means moneys budgeted, unobligated, and distributed to the commission for the purposes of KRS 146.115.
- (6) "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission.
- (7) "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.
- (8) "Conservation district" or "district" is defined by KRS 262.010(3).
- (9) "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.
- (10) "District supervisor" means a member of the governing board of a conservation district.
- (11) "Eligible land" means land on which agricultural or silvicultural production is being conducted.
- (12) "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.
- (13) "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.

- (14) "Program year" means the period from July 1 to June 30.
- (15) "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.
- (16) "Surface water":
- (a) Means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes, and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface; and
  - (b) Does not mean effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger.
- (17) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.
- (18) "Watershed" means all the area from which all drainage passes a given point downstream.

## Section 2. Eligibility of Persons.

- (1) Eligible persons. Persons conducting agricultural or silvicultural production shall be eligible to receive cost-share assistance for best management practices if:
- (a) The person has prepared an agriculture water quality plan; and
  - (b) The person agrees to perform and to maintain best management practices for the period of time established by the commission.
- (2) Ineligible persons. A person engaged in agricultural or silvicultural production shall not be eligible for further cost-share assistance if the applicant has:
- (a) Failed or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" pursuant to KRS 224.71-130; or
  - (b) Failed to comply with practice lifespans or complete previous cost-share projects within five (5) years prior to the application date.

## Section 3. Eligible Best Management Practices.

- (1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for:
- (a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;
  - (b) Reducing the loss of topsoil vital to sustain production of food and fiber; and
  - (c) Preventing surface water and groundwater pollution.
- (2) Approved best management practices. Complete listings of eligible best management practices are contained in The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook.

## Section 4. Solicitation of Applications.

- (1) The commission shall establish for each program year a deadline for submittal of applications for cost-share assistance.
- (2) Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as electronic media, local newspapers, local radio stations, and any newsletters published by the district.

## Section 5. Contents and Completion of Applications.

- (1) Contents of application. An applicant shall submit to the conservation district in which the eligible land is located the Kentucky Soil and Water Cost Share Program Application, found at <https://dep.gateway.ky.gov/eForms/Main/Forms.aspx>, in order to apply for cost-share assistance. The applicant shall include with the application:

- (a) An agriculture water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; and
  - (b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost that the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.
- (2) An applicant applying for cost-share funds for best management practices involving nutrient storage shall include a nutrient management plan as established in the Statewide Agriculture Water Quality Plan.
- (3)
- (a) Completion of applications. An applicant who does not have an agriculture water quality plan that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110, in effect for the eligible land, or who has not determined the anticipated total cost of the requested best management practice may request technical assistance from the conservation district in developing a best management practices plan and determining costs.
  - (b) If the best management practices plan has been developed and the anticipated total cost determined, the application shall be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

#### Section 6. Review of Applications.

- (1) Each conservation district shall review and determine the eligibility of all applications submitted to the district by the established deadline.
- (2) The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the board of supervisors for that meeting.
- (3) A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility.
- (4) The district shall forward the applications to the commission within fifteen (15) days after determining eligibility.

#### Section 7. Prioritization of Applications. The commission shall prioritize the applications of persons determined by the conservation districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

- (1) Classification of priorities. Applications shall be prioritized based on:
  - (a) Applicants conducting agricultural or silvicultural production needing animal waste management systems where animal waste has been identified by the Energy and Environment Cabinet as a water pollution problem; and
  - (b) Applicants who are members of agricultural districts.
- (2) Applications within each classification established in subsection (1) of this section shall be prioritized based on:
  - (a)
    - 1. Presence of water pollution, based on:
      - a. Notification by a local, state, or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;
      - b. Determination of the Energy and Environment Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;
      - c. Identification by the Energy and Environment Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; or

- d. Other documentation of water pollution, such as through a biological assessment; or
- 2. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted;
- (b) Types of water pollutants:
  - 1. Animal waste;
  - 2. Sediment run-off;
  - 3. Nutrient loading; or
  - 4. Pesticide application, storage or disposal;
- (c) Proximity of pollutant to groundwater or surface water;
- (d) Magnitude of water pollution; and
- (e) Location in a priority watershed as established by the Agriculture Water Quality Authority or Division of Water including a source water protection area.

**Section 8. Allocation of Cost-share Assistance.**

- (1) The available funds received by the commission for the cost-share program shall be held by the Kentucky Division of Conservation and disbursed to the conservation districts based on requests from the districts approved by the commission after a practice has been completed and all paperwork has been signed as complete and submitted for payment. The district shall be granted a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund that shall be held by the Kentucky Division of Conservation based on the commission's approval of an initial district request in accordance with the prioritization system established in Section 7 of this administrative regulation.
- (2) Any funds granted by the commission and distributed by the Kentucky Division of Conservation to a district for a practice that results in overpayment shall revert to the commission if the district has not received prior permission to obligate the funds to another applicant within one (1) year from receipt.
- (3) The commission shall retain ten (10) percent of the annual appropriation in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by Subchapter 71 of KRS Chapter 224.

**Section 9. Design of Best Management Practices.** Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

**Section 10. Execution of Performance and Maintenance Agreements.** After an application has been awarded cost-share assistance and before the applicant has received payment of the cost-share funds, the applicant and the conservation district shall execute a performance and maintenance agreement.

- (1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to comply with paragraphs (a) through (d) of this subsection.
  - (a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation.
  - (b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement.
  - (c) Upon completion of the approved best management practice, the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice.

(d) The applicant shall agree that at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed.

(e) Approved applicants shall complete the practice within one (1) year from the date of approval. Upon request, the Division of Conservation shall grant a six (6) month extension per approved application. After two (2) extensions have been granted and expired, the landowner shall forfeit the right to the funds.

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed.

(a) The district shall require a refund of cost-share assistance funds if the district determines:

1. An approved best management practice has not been maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement; or

2.

a. The applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of the lifespan.

b. If the applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds pursuant to clause a. of this subparagraph, then the applicant shall only be responsible for refunding to the district the amount of funds prorated on the number of years remaining in the best management practice maintenance agreement.

(b)

1. If the district determines that the applicant shall refund the amount of the cost-share, the applicant shall have thirty (30) days to make payment to the district. The district may grant the applicant an extension of time to make the refund upon the submission of a written request by the applicant.

2. If the applicant fails to timely refund the amount of the cost-share, the district shall refer the matter to the commission.

3. If the district declines to seek a refund, the district shall state its reason for not doing so and notify the commission and the applicant. The commission shall review the matter to determine whether or not to seek a refund.

4. If the commission becomes aware of a situation in paragraphs (a)1. or (a)2. of this subsection, and the district fails to review the matter, the commission shall conduct a review of the matter and determine whether or not to seek a refund.

5. The commission shall be authorized to recover the amount of the cost-share by initiating a legal action in the Franklin Circuit Court.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and that later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has been

installed in accordance with The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook.

(6) Limitations on awards.

(a) Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of \$20,000 per year.

(b) An applicant shall only submit one application per program year.

(c) Cost-share assistance may be used with federal or local cost-share funds on the same practices if the total cost share payment does not exceed seventy-five (75) percent of the practice cost.

(d) Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 11. Reporting and Accounting. District reporting and accounting. A district shall:

(1) Maintain a control ledger showing the current approved applications to the commission and cost share approved amounts for approved applications, based on estimated cost;

(2) Submit a quarterly report to the commission indicating any unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(3) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(4) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

(a) The approved application for allocated funds;

(b) A copy of the estimated cost sheet;

(c) Certification of practice completion;

(d) Applicant's vouchers, bills, or receipts;

(e) Final designs for best management practices;

(f) The performance and maintenance agreement;

(g) Any amendments to the performance and maintenance agreement; and

(h) A map locating the practices.

Section 12. Appeals.

(1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial assistance may file a written appeal with the commission. The appeal shall be filed within thirty (30) days of the decision and shall state the basis for the appeal.

(2) Procedure for hearing appeal.

(a) The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal.

(b) The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 13. Incorporation by Reference.

(1) "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook", October 2019 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601,

Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.  
(22 Ky.R. 142; eff. 8-24-1995; TAm eff. 8-9-2007; Crt eff. 6-27-2018; 46 Ky.R. 2120, 2919;  
eff. 7-9-2020; TAm eff. 4-2-2021.)