

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 465 Session of 2021

INTRODUCED BY YAW, ARGALL, J. WARD, MARTIN, STEFANO, AUMENT, SCHWANK, COMMITTA, STREET AND BARTOLOTTA, MARCH 22, 2021

SENATOR VOGEL, AGRICULTURE AND RURAL AFFAIRS, AS AMENDED, JUNE 7, 2021

AN ACT

1 Providing for the Agricultural Conservation Assistance Program
2 and imposing powers and duties on the State Conservation
3 Commission.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Agricultural
8 Conservation Assistance Program Act.

9 Section 2. Definitions.

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

13 "Agricultural erosion and sedimentation control plan." A
14 site-specific plan identifying BMPs to minimize accelerated
15 erosion and sedimentation from agricultural runoff required by
16 25 Pa. Code Ch. 102 (relating to erosion and sediment control).

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

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

6 "Animal concentration areas." The following:

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

11 (2) The term does not include:

12 (i) Areas managed as pastures or other cropland.

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

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

21 "Commission." The State Conservation Commission.

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

25 "Conservation plan." A plan that identifies conservation
26 practices and includes site-specific BMPs for agricultural
27 plowing or tilling activities and animal heavy-use areas.

28 "Cropland acres." The acres of land used to produce adapted
29 crops for harvest, which includes both cultivated and
30 noncultivated crops and areas managed for forage production that

1 are harvested by livestock, or a combination of livestock and
2 mechanical harvesting.

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

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

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

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

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

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

26 "Program." The Agricultural Conservation Assistance Program
27 established under section 4(a).

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

30 "Surface waters." Perennial and intermittent streams,

1 rivers, lakes, reservoirs, ponds, wetlands, springs, natural
2 seeps and estuaries. The term does not include water at
3 facilities approved for wastewater treatment such as wastewater
4 treatment impoundments, cooling water ponds and constructed
5 wetlands used as part of a wastewater treatment process.

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

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

16 Section 3. Statement of purpose.

17 The purpose of this act is to establish a program to provide
18 financial and technical assistance for the implementation of
19 best management practices on agricultural operations.

20 Section 4. Agriculture Conservation Assistance Program.

21 (a) Establishment.--The Agriculture Conservation Assistance
22 Program is established within the commission.

23 (b) Sources of funding.--Funding for the program may be
24 provided through any of the following:

25 (1) Money appropriated for purposes of the program.

26 (2) Federal money appropriated or authorized for
27 purposes of the program.

28 (3) Money received from another governmental agency
29 through an interagency agreement or memorandum of
30 understanding.

1 (4) A gift or other contribution from a public or
2 private source.

3 (5) Return on money dedicated for the program.

4 (c) Administration expenses.--The commission may dedicate up
5 to 4% of the funds allocated for expenses incurred in
6 administration of the program.

7 Section 5. Powers and duties of commission.

8 (a) General rule.--The commission shall:

9 (1) Adopt performance standards for:

10 (i) Administration and oversight of the program.

11 (ii) Best management practices to be implemented and
12 receive funding under the program.

13 (2) Provide a system of program evaluation and quality
14 control.

15 (3) Annually assess the program and report the
16 assessment to the following:

17 (i) The chairperson and minority chairperson of the
18 Agriculture and Rural Affairs Committee of the Senate.

19 (ii) The chairperson and minority chairperson of the
20 Environmental Resources and Energy Committee of the
21 Senate.

22 (iii) The chairperson and minority chairperson of
23 the Agriculture and Rural Affairs Committee of the House
24 of Representatives.

25 (iv) The chairperson and minority chairperson of the
26 Environmental Resources and Energy Committee of the House
27 of Representatives.

28 (4) Develop a training, education and technical
29 assistance program for technicians, engineers and other
30 individuals performing work under the program.

1 (5) Create a system for collecting and reporting of
2 collected data on funded practices to governmental agencies,
3 in a manner consistent with criteria established under
4 Federal and State laws.

5 (b) Delegation of powers and duties.--In performance of its
6 powers and duties, the commission may delegate to The
7 Pennsylvania State University or other entity determined
8 appropriate by the commission to execute specific administrative
9 tasks and activities. Up to 4% of the funds provided under
10 section 4(b) may be committed by the commission to compensate
11 the entities performing the administrative tasks and activities.
12 Section 6. Apportionment criteria.

13 (a) General rule.--The commission shall apportion the funds
14 under section 4(b) to participating conservation districts based
15 on written apportionment criteria developed by the commission to
16 establish priorities based on preventing nutrient and sediment
17 pollution. The apportionment criteria shall consider:

- 18 (1) Agriculturally impaired stream miles.
- 19 (2) The number of cropland acres.
- 20 (3) The number of farms.
- 21 (4) The number of livestock and poultry.
- 22 (5) Other criteria as established by the commission.

23 (b) Unused funds.--Any apportioned funds that are not used
24 in any fiscal year may roll over for the following fiscal year.
25 Any unused apportioned funds after two years shall be
26 reapportioned to participating conservation districts in the
27 following year, consistent with the apportionment criteria
28 prescribed under subsection (a).

29 Section 7. Powers and duties of participating conservation
30 districts.

1 (a) General rule.--Each conservation district participating
2 in the program shall manage and administer funds apportioned by
3 the commission in a manner consistent with this act and the
4 guidelines established by the commission. Each participating
5 conservation district shall enter into an agreement with the
6 commission to establish the administrative responsibilities and
7 activities to be performed by the conservation district.

8 (b) Use of funds.--Funds apportioned to a participating
9 conservation district shall be used for:

10 (1) Approving and providing financial assistance ~~to~~ <--
11 ~~landowners and farmers~~ TO THE PERSON WHO RECEIVED APPROVAL <--
12 FOR THE PROJECT to install and implement BMPs, consistent
13 with the criteria for approval of projects provided under
14 section 10.

15 (2) Costs for technical training and education and
16 technical assistance in administration of projects approved
17 by the conservation district, INCLUDING TECHNICAL ASSISTANCE <--
18 PROVIDED BY THIRD PARTIES IN ACCORDANCE WITH THE PROVISIONS
19 OF SECTION 5(A)(4) OF THIS ACT.

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

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

27 (5) Entering into written agreements with recipients of
28 approved funding.

29 (6) Administration and procedures to ensure recipients
30 of financial assistance timely complete projects in a manner

1 that meets established design and construction standards.

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

6 (8) Development of procedures to ensure proper
7 performance of agreements executed under the program.

8 (c) Administration.--A participating district may dedicate
9 up to 12% of the annual amount apportioned by the commission
10 under section 6 for expenses incurred in administration of the
11 program.

12 Section 8. Advisory committee.

13 (a) General rule.--Within a conservation district, a
14 committee may be appointed by the conservation district board to
15 advise the program and identify local priorities and
16 opportunities to complement other programs.

17 (b) Members.--The committee shall include at a minimum one
18 staff member of the conservation district and one local
19 representative of the United States Department of Agriculture
20 Natural Resources Conservation Service and may include up to
21 three other local representatives who are knowledgeable of
22 agricultural operations and conservation.

23 Section 9. Applications and certifications.

24 (a) Application process.--~~A person may apply to its~~ <--
25 ~~applicable delegated conservation district or the commission for~~
26 ~~an eligible project under the program. The conservation district~~
27 ~~shall prescribe the~~ IN COUNTIES WITH A PARTICIPATING <--
28 CONSERVATION DISTRICT, A PERSON MAY APPLY TO THE PERSON'S
29 APPLICABLE DELEGATED CONSERVATION DISTRICT FOR AN ELIGIBLE
30 PROJECT UNDER THE PROGRAM. IN COUNTIES WITHOUT A PARTICIPATING

1 CONSERVATION DISTRICT, A PERSON MAY APPLY DIRECTLY TO THE
2 COMMISSION FOR AN ELIGIBLE PROJECT UNDER THE PROGRAM. THE
3 CONSERVATION DISTRICT AND COMMISSION SHALL PRESCRIBE THEIR
4 RESPECTIVE form and manner of the application. The application,
5 at a minimum, shall include:

6 (1) The location of the project.

7 (2) The description of the project, including the
8 planned BMPs.

9 (3) If applicable, the amount and sources of funding
10 available for the project.

11 (4) The total cost of the project.

12 (5) Any other information as required by the
13 conservation district OR COMMISSION, AS APPLICABLE. <--

14 (6) Relevance of the project to the development,
15 improvement or implementation of the applicant's manure or
16 nutrient management plan, conservation plan or erosion and
17 sedimentation plan.

18 (b) Review of applications.--The conservation district OR <--
19 COMMISSION, AS APPLICABLE, shall review complete applications
20 based upon the criteria established under section 10 on an
21 ongoing basis and in the order received. Within 90 days of
22 receipt of a complete application, unless extenuating
23 circumstances prevent the conservation district OR COMMISSION <--
24 from doing so, the conservation district OR COMMISSION, AS <--
25 APPLICABLE, shall notify the applicant of:

26 (1) Whether the project is approved for funding under
27 the program.

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

29 (3) The amount of each type of funding approved for the
30 project.

1 (c) Notice of completion and certification.--Upon completion
2 of a project funded under this program, the person who received
3 the approval for the project shall notify the conservation
4 district OR COMMISSION, AS APPLICABLE, of the completion of the <--
5 project and shall submit all documents to certify the
6 completion.

7 (d) Inspection.--Projects funded under this program may be
8 subject to inspection by the commission, conservation district
9 or their designated agent.

10 (e) Distribution of funds.--The funds shall be distributed
11 upon certification and verification that the funded project has
12 been completed and design and construction standards have been
13 met.

14 Section 10. Criteria for evaluation of applications.

15 In approving applications for eligible projects under the
16 program, the applicable delegated conservation district or
17 commission shall give priority to complete applications based
18 upon the following criteria:

19 (1) The project meets the goals of any applicable
20 watershed implementation plan.

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

27 (3) The project implements best management practices
28 included in a conservation plan, agricultural erosion and
29 sediment control plan, manure management plan or nutrient
30 management plan. For purposes of this paragraph, the

1 conservation district or commission shall give priority to
2 projects that implement best management practices for control
3 of nitrogen or phosphorus.

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

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

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

20 (7) Any other criteria considered by the conservation
21 district, AS APPLICABLE, and approved by the commission. <--

22 Section 11. Liability for failure of performance.

23 (a) Liability.--A person receiving funds under an approved
24 project who fails to adequately perform any term of the
25 agreement executed for the project shall be liable for repayment
26 of money provided to the recipient related to adequate
27 performance of the agreement term.

28 (b) Cause of action.--The commission or conservation
29 district may initiate any legal action in law or equity to
30 compel adequate performance of a project agreement or recoup

1 funds provided under an approved project for which the recipient
2 is liable for repayment under subsection (a).

3 (c) Redistribution of funds received by the commission.--Any
4 funds repaid to the commission as a result of failure of
5 performance of a project agreement may be provided to the
6 conservation district that was party to that project agreement
7 for use in other project agreements.

8 Section 12. Effective date.

9 This act shall take effect in 60 days.