USDA Natural Resources Conservation Service
U.S. DEPARTMENT OF AGRICULTURE

Farm Bill Eligibility and Tile Drainage

Guidance for Remaining in Compliance

Background

The Wetland Conservation Compliance provisions (Swampbuster) were introduced in the 1985 Farm Bill. The purpose was to remove certain incentives to produce agricultural commodities on converted wetlands.

People who produce an agricultural commodity on wetlands that were converted between December 23, 1985, and November 28, 1990, are ineligible for Farm Bill program benefits in any year the agricultural commodity is produced. People who convert a wetland making production of an agricultural commodity possible after November 28, 1990, are ineligible for program benefits until the functions of the wetland that was converted are restored or mitigated. Making agricultural commodity production possible includes:

- Allows or would allow production of an agricultural commodity where such production was not previously possible.
- Makes an area farmable more years than previously possible.
- Reduces crop stress and allows increased yields.
- After November 28, 1990, allows forage production or pasture and hayland use. On sites with woody vegetation, trees and stumps must be removed to constitute “making production possible”.

Considering Tiling?

The first thing you need to know is if there are wetlands near the area where the tile would be installed. Tiles are designed to draw water horizontally through the soil, which means they could convert wetlands 100, 200, or more feet away and cause Farm Program eligibility issues.

To determine if there are wetlands that might be impacted, a landowner or operator needs to have a certified wetland determination completed by the Natural Resources Conservation Service (NRCS). To do this, the person needs to go to their local Farm Service Agency (FSA) office and sign an AD-1026 form, indicating where they want to install the tile drainage. The FSA office will forward this request to NRCS to see if there is a certified wetland determination already completed or if one needs to be conducted. A certified wetland determination will confirm if wetlands are present and label them to indicated authorized uses. This information is then used to determine areas where tile drainage should not be installed due to proximity to a wetland.

Understanding Compliance

Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) provisions defined in the Farm Bill aim to reduce soil loss on erosion-prone lands and protect wetlands for the multiple benefits they provide. These provisions apply to all land that is considered highly erodible or a wetland, and that is owned or farmed by persons voluntarily participating in USDA programs.

Producers, and any affiliated individuals or entities who participate in most programs administered by the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA) are required to comply with these provisions. Non-compliance may affect the following types of USDA program benefits:

- FSA loans and disaster assistance payments,
- NRCS and FSA conservation program benefits,
- Federal crop insurance premium subsidies.

Timing and Eligibility

A landowner or operator does not become ineligible for USDA Farm Program benefits due to the installation of tile drainage, as long as the tile doesn't convert any wetlands, or make production possible, as outlined above. To determine where tile drainage could be installed, without impacting eligibility, Nebraska NRCS has developed a document entitled, "Tile Guidelines to Protect Wetland Hydrology". This document includes tables for each county in Nebraska, with guidance for specific soil types concerning the minimum distance tile drainage must be kept from wetlands. This information is often referred to as tile lateral effect (setback) distance.

Steps to Determine Where Not to Tile

Once a landowner or operator has received their certified wetland determination, they need to combine that with soils and general landscape information to develop a tile drainage plan to avoid wetland conversions. Also, be aware of what is in the adjacent field or within the setback distance. If adjacent land/property contains an obvious wetland, then setback distances may apply to your tile system. If you feel there is an adjacent obvious wetland within the setback distance of your proposed tile drainage, contact NRCS for assistance and clarification.

An obvious wetland is an area that is continuously inundated or the ground saturated for long periods of time during the growing season to such an extent that access by foot is not feasible. Additionally, wetland sites that are cropped or have had forage harvested by mechanical means less than 5 out of 10 years because of ponding, flooding, or saturation are obvious wetlands.

Information Resources

Information needed to develop a tile drainage plan that avoids converting wetlands can be found at https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/nebraska/nebraska-conservation-technical-assistance

TILE GUIDELINES TO PROTECT WETLAND HYDROLOGY (NEFH Amendment 44 Tile Drainage Near Wetlands)

- Step by Step Use of NEFH Amendment 44 Tile Drainage Near Wetlands
- Hydrology Worksheet for Downstream Landowner-Operator
- NE EXPEDITED MINIMAL EFFECT Drainage Tile Installation Tile Drainage Charts by County
- Hydric Soil Series Hydrology
- Fact Sheet - Handling an increase in Water from Upstream
- Fact Sheet - Farm Bill Eligibility and Tile Drainage

Also, NRCS can provide customers with the above information. However, the certified wetland determination is only available to the landowner or their formally designated representative.

Responsibility

It is the responsibility of the landowner, operator, and/or tile contractor to follow guidance provided. If guidance is not followed, the landowner/operator may be considered out of compliance and become ineligible for USDA Farm Program benefits. NRCS can assist with answering general questions associated with the tiling project and how to avoid the conversion of wetlands.