

Subpart A - Compliance with Laws and Regulations

405.0 Purpose

This subpart sets forth NRCS policy on financial and technical assistance to landowners and operators in planning, constructing, operating, and maintaining conservation practices that are subject to Federal, State, Tribal, and local laws and regulations. It applies to all work in connection with assistance to landowners, operators, conservation districts, and others on privately owned lands. It does not apply to work where NRCS or a project sponsor owns the land or an easement on the land, such as in Public Law 566, Resource Conservation and Development, Wetlands Reserve Program, pilot watershed projects, and other similar programs.

405.1 Responsibilities

- A. **Deputy Chief, Science and Technology**—Ensures that this policy complies with applicable laws and regulations.
- B. **Regional Conservationists**—Ensure that State Conservationists and the Directors, Pacific Islands and Caribbean Areas, follow this policy.
- C. **State Conservationists and Directors, Pacific Islands and Caribbean Areas**
State Conservationists and Directors, Pacific Islands and Caribbean Areas, provide guidance for technical assistance to meet expressed needs in accordance with Federal, State, Tribal, and local laws and regulations. Guidance material prepared at field offices must reflect the requirements of local laws and regulations. This material should be prepared in collaboration with the official or agencies responsible for administering the laws and regulations and will include all of the following:
- (i) General requirements of the laws and regulations
 - (ii) Information and assistance NRCS can furnish to landowners and operators in connection with their applications for permits or approvals
 - (iii) Procedures for ascertaining that the landowner or operator has obtained required permits
- D. **Employees**
- (1) Employees must have enough knowledge of Federal, State, Tribal, or local laws and regulations to—
 - (i) Recognize that a contemplated facility or practice may be subject to such laws and regulations.
 - (ii) Provide the landowner or operator with the name and address or Web site of the agency or official from whom application forms and detailed information can be obtained.
 - (2) In furnishing technical assistance for planning or constructing a conservation practice that may be subject to the requirements of Federal, State, Tribal, or local laws and regulations, NRCS policy is to—
 - (i) Inform the landowner or operator in writing or verbally that it is his or her responsibility to comply with applicable laws and regulations in relation to constructing and operating conservation practices and file a copy of the written notice or document the verbal notice in the NRCS case file.
 - (ii) Design conservation practices that meet landowner or operator needs, NRCS standards, and the requirements of applicable laws and regulations and document the needs in the case file.
 - (iii) Furnish the landowner or operator, on request, any available information needed to obtain rights, permits, or approvals necessary to construct, operate, and maintain the practice. This includes surveys, maps, technical data, and construction plans and specifications prepared by NRCS employees during the development of the conservation plan or overall waste or water management plan at any phase of planning or design of conservation practices.
 - (iv) Provide further technical assistance only after the landowner or operator obtains required rights, permits, and approvals necessary to construct, operate, maintain, and apply practices requiring rights or permits under water rights laws; Public Law 92-500, the Federal Water Pollution Control Act Amendments of 1972; and dam safety laws or regulations, or cost-shared practices. The State Conservationist or Directors, Pacific Islands and Caribbean Areas, may include other items important in the respective State or area.
 - (3) If it becomes apparent that the landowner or operator does not intend to obtain the necessary permits or comply with all laws and regulations pertaining to the installation of the conservation practice, NRCS employees must terminate all assistance on the practice immediately and notify the landowner or operator in writing that all financial and technical assistance has been terminated. The letter will clearly state—
 - (i) The "as of" date when assistance was terminated.
 - (ii) The reasons for termination.
 - (iii) That repayment of financial assistance, payment of penalties associated with contract termination, or both may be required.
 - (iv) That any further action on the practice is at the landowner's or operator's own risk and without the approval of NRCS personnel.
 - (4) Any reinstatement of technical or financial assistance must be documented in writing. The

documentation must clearly state the "as of" date for reinstatement of assistance, the reasons for reinstatement, and that continued assistance is subject to obtaining the necessary permits and complying with all laws and regulations pertaining to the installation of the conservation practice.

(5) NRCS employees are not to procure permits, rights, or approvals or enforce laws and regulations.

E. Landowners or Operators

- (1) Acquire water rights.
- (2) Obtain approval of construction plans from Federal, State, Tribal, or local agencies.
- (3) Obtain related permits.
- (4) Obtain Federal or State permits required by State regulations or Public Law 92-500, the Federal Water Pollution Control Act Amendments of 1972.
- (5) Notify adjoining landowners affected by the work.
- (6) Obtaining any required property rights.
- (7) Make inspections and carrying out required maintenance.
- (8) Apply and operate conservation practices in accordance with applicable laws, rules, and regulations.