

COOPERATOR NON-COMPLIANCE WITH MAINTENANCE REQUIREMENTS FOR COST SHARE CONTRACTS

NC Soil & Water Conservation Commission

STATEMENT OF INTENT

~~Districts are not consistent in determining how many times a cooperator can be found in non-compliance with the maintenance requirements expressed in cost share contracts before being asked to repay cost share funds. Some districts have allowed cooperators to go out of compliance multiple times without making the cooperator repay cost shared funds. This result in a situation where a cooperator may only be in compliance with the maintenance requirements for a cost shared practice for a fraction of the time expected. This also undermines the ability of districts to hold all cooperators accountable to maintain the practices installed with public cost share assistance.~~

The intent of this policy is to clarify the maximum number of times a cooperator may be found out of compliance with contract requirements before being required to repay cost share funds or cost share incentive and to outline the compliance process.

STATEMENT OF POLICY

The Commission's policy for addressing non-compliance on cost share contracts shall be as follows:

1. For all cost share practices: **LABEL CHART/BOX; MAKE SURE IT IS EXPLICIT AND INCLUDES ALL STEPS, REFER TO THE CHART IN THE POLICY TEXT**
 - a. The Ffirst time a best management practice (BMP) is found out of compliance –the district **must** sends a written warning by certified mail within 30 calendar days to the cooperator with notification to correct non-compliance within 30 calendar days, or to repay a prorated amount of contracted funds (with reasonable consideration for vegetation re-establishment up to 12 months); (02 NCAC 59D.0107).
 - b. If the cooperator restored compliance, but was found out of compliance a second time, then the district must require cooperator to repay pro-rated funds **within twenty days of receipt of written demand**. The district will notify the division, and if payment is not received the division will send the non-compliance issue to the Attorney General's office for collection.
 - c. If a cooperator refuses to repay pro-rated funds, the district notifies the division. The division will send the non-compliance issue to the Attorney General's office for collection.
 - d. If a cooperator brings the BMP back in compliance or repays the pro-rated amount before the end of the 30 days, no further action is required.
2. For incentive practices, districts must require the cooperator to repay 100% of funds the first time the cooperator is found out of compliance, ~~unless the cooperator has failed to achieve compliance despite making a good faith effort.~~ The district may grant a prescribed extension period if it determines compliance cannot be met due to circumstances beyond the applicant's control. (02 NCAC 59D .0107)

September 16, 2009

3. If any soil and water conservation district, division and Soil and Water Conservation Commission representatives are denied reasonable access to a cooperator's property or if a cooperator

<u>STEPS</u>	<u>TIMELINE</u>	<u>ACTION</u>

revokes permission to access the BMP(s) so the district he/she can perform an inspection of a cost shared BMP(s), the BMP(s) shall be considered out of compliance.

This policy applies to all cost share programs under the Commission's authority.

COST SHARE PROGRAM COMPLIANCE PROCEDURE

~~This policy was approved by the Soil and Water Conservation Commission in regular session on September 16, 2009.~~

~~Richard Smith, Acting Chairman
Soil and Water Conservation Commission~~

September 16, 2009

<u>1</u>	<u>30 days from the date the BMP(s) were found out of compliance.</u>	<ul style="list-style-type: none"> • <u>Cooperator is notified by warning letter of the non-compliance by certified mail (see 1a. above).</u> • <u>District to mail or email a copy of the letter and receipt to the division per commission policy (include policy above).</u>
<u>2</u>	<u>20 days from the date of receipt of the certified letter.</u>	<ul style="list-style-type: none"> • <u>Cooperator is given 30 days to bring the BMP(s) back into compliance (12 months for vegetation BMPs) or pay a pro-rated amount back to the division (see 1a. above).</u> • <u>Incentives BMPs are repaid at 100%.</u> • <u>Checks are made payable to NCDA&CS and mailed to the division by cooperator or district staff within 20 days of date of receipt of the certified letter.</u>
<u>3</u>	<u>If no response from cooperator after 20 days from the receipt of the letter.</u>	<ul style="list-style-type: none"> • <u>The district must mail or email copies of all documentation (letters, receipts, notes, pictures, etc.) of the non-compliance to the division to seek collection.</u> • <u>The documentation will be turned over to the Attorney General's office for collection of funds.</u>
<u>4</u>	<u>If funds are not repaid within 20 days of the demand letter sent by the Attorney General's office.</u>	<ul style="list-style-type: none"> • <u>The Attorney General's office will seek collection of funds through litigation.</u>

*Jennie provided text replacing certified in case other method is used for delivering and confirming letter.

The language of interest in the rule on service of process that addresses use of fed ex delivery would be “by depositing with a designated delivery service authorized pursuant to 26 USC 7502(f)(2) . . . delivering to the addressee, and obtaining a delivery receipt. . . . [A] “delivery receipt” includes an electronic or facsimile receipt.” NCGS 1A-1, Rule 4(j).

So you might say something like “by certified mail return receipt requested or by delivery through a designated delivery service providing a delivery receipt (e.g. Federal Express).”