



SOIL and WATER CONSERVATION PROVISIONS

of the 1990 FOOD, AGRICULTURE, CONSERVATION and TRADE ACT

*Dr. Monroe Rasnake, Extension Agronomy Specialist, Bob Eddleman, USDA-SCS, Princeton, KY
and Tommy Howard, USDA-ASCS, Lexington, KY*

Soil conservation is not new in Kentucky. Most farmers are aware of the need to protect soil and have used practices such as crop rotation, residue management, contour tillage, sod waterways, and no-till for many years. However, soil erosion is of never-ending concern and still remains a problem in many areas.

The 1985 Farm Bill (Food Security Act) included several new

provisions intended to improve soil and water conservation in the U.S. (see Kentucky Cooperative Extension Service publication AGR-138, "1985 Food Security Act"). The Conservation Program Improvements Act, Title XIV of the 1990 Farm Bill, basically extends the 1985 bill, but with several major differences. These will affect Kentucky farmers through 1995 and beyond.

PURPOSE OF THE ACT

Like the 1985 bill, the new bill will:

- reduce soil loss due to wind and water erosion
- protect the nation's long-term capability to produce food and fiber
- reduce sediment and improve water quality
- assist in preserving the nation's wetlands
- curb production of surplus commodities.

However, more emphasis is being placed on water quality, and the most highly erodible and environmentally sensitive lands are being targeted.

INCENTIVE PROGRAMS

Four programs in the 1990 Farm Bill are designed to encourage soil and water conservation on the nation's farms through incentive payments to farm owners and operators: the Conservation Reserve Program (CRP), Wetlands Reserve Program (WRP), Agricultural Water Quality Incentive Program (AWQIP), and the Environmental Easement Program (EEP). These are collectively called the Agricultural Resources Conservation Programs. The most recognizable one is the CRP, which was first established by the 1985 Farm Bill.

Conservation Reserve Program (CRP)

The CRP was continued by the 1990 Farm Bill with few changes. The program has two primary goals:

1. control soil erosion on highly erodible land, and
2. emphasize multiple environmental benefits, primarily to improve quality of both surface and ground water.

The program goal is for up to 45 million acres of highly erodible and environmentally sensitive land to be removed from crop production for a 10- to 15-year period. Wetlands are not eligible for CRP. Incentives to the landowner are a 50% cost-share in establishing permanent cover and an annual rental fee which is determined by a bid process.

Bids for CRP are accepted only during scheduled signup periods, which are announced in advance by ASCS. Two types of

bids—standard and easement—are currently used in Kentucky. Participants must list, in dollars per acre per year, how much land they want to keep in an approved conservation cover. All bids go into a national “pool” where they are evaluated as to their “agricultural use value.”

All standard bids will be accepted or rejected based on their environmental benefit. The factors considered are: surface and ground water quality, soil productivity, conservation compliance assistance, tree planting, and assistance to state 319 and conservation priority areas which have been identified by agencies for special emphasis.

Eligibility for CRP has been expanded to include:

- marginal pastureland in or near riparian areas or for other water quality purposes;
- cropland contributing to water quality degradation;
- shelterbelts, windbreaks, living snow fences, filterstrips devoted to trees or shrubs and wildlife habitat corridors (no more than 10% of CRP acres may be in the wildlife practice);
- newly-created sod waterways and contour strips;
- lands posing an environmental or productivity threat due to salinity.

Easements for “the useful life” of some practices such as windbreaks, filterstrips, and wildlife corridors may be required. Existing CRP contracts may be extended up to 15 years if the landowner is willing to plant trees, windbreaks, or shelterbelts. New contracts may be for 15 years if hardwood trees are planted. The goal is to have one-eighth of CRP land in trees or permanent wildlife cover.

One million of the maximum 45 million acres will be reserved

for the 1994-95 signup periods. The purpose is to help producers in meeting conservation compliance requirements before the 1995 deadline by placing some land in the CRP.

Land placed in CRP will retain its crop acreage base during the contract and can be returned to crop production when the contract expires. However, at that time it will be subject to the conservation compliance provisions which are described later in this publication. The farmer's options on CRP land coming out of contract are the same as they are on similar non-CRP land.

During the CRP contract, the land can only be used for recreational purposes. During natural disasters such as drought, it might be released for hay harvesting.

Wetlands Reserve Program (WRP)

The wetlands reserve is a new program authorized by the 1990 Farm Bill. It provides for the voluntary enrollment of a million acres of wetlands in 30-year or permanent easements or the maximum allowed by state law. The lands eligible are those classed as farmed wetlands, prior-converted wetlands, functionally dependent lands, and other wetlands if functional values will be enhanced. CRP lands with high wetland values may be eligible along with riparian areas that link wetlands.

Under this program, the landowner agrees to implement a wetlands conservation plan that will be developed by SCS and the Fish and Wildlife Service (FWS) for the area. The land can only be used for compatible uses specified in the plan. Cost-share

of at least 50% will be provided for implementing the plan.

Payments for WRP cannot exceed the fair market value of the land minus the value of the land as encumbered by the program. Payments are to be spread over a 5- to 20-year period, but lump-sum payments may be allowed for permanent easements. The program will probably be administered through a bid process similar to CRP.

Land placed in WRP loses its commodity crop base and crop acreage history. At the end of the easement, it will be subject to swampbuster and/or any other provisions in effect at that time.

Agricultural Water Quality Incentive Program (AWQIP)

Through this program, farm owners and operators will be able to enter into 3- to 5-year agreements which are intended to reduce the impact of surface or subsurface agricultural drainage on water quality in certain targeted areas. Areas to be targeted include: wellhead protection areas within 1,000 feet of a public well; karst, or sinkhole land; critical cropland within targeted areas where endangered species habitat is threatened; and other environmentally sensitive areas that may be identified. The goal is to enroll 10 million acres in the program by the end of 1995.

The farmer is required to implement a water quality protection plan on the affected land. This will involve a minimum of a permanent cover crop

to reduce runoff and soil erosion. A nutrient management plan may also be required. A wetland and wildlife habitat treatment option will be available in some areas. The cropland base will be protected during the agreement period.

Benefits to the land owner-operator include incentive payments of up to \$3,500 per year. Cost share is also available for establishing the wetland and wildlife habitat options. Cost share is for approved protection and enhancement practices and limited to a maximum of \$1,500 per contract.

Environmental Easement Program (EEP)

This program takes out of production and protects "environmentally sensitive land" through long-term easements. These will be permanent easements in most cases. No enrollment goal was set, but no more than 10% of cropland in a county can be entered into easement programs. Eligible land includes riparian corridors, CRP land that is likely to return to production, critical habitat areas for threatened or endangered species, and other environmentally sensitive areas.

The land owner-operator is required to implement a natural resources management plan on the program land. The plan will be developed by SCS in consultation with other agencies. Crop base and allotment history will be permanently retired for land in the program. During the easement period, the land could only be used for recreational purposes.

Benefits to the farmer are annual payments limited to

\$50,000 per year for no more than 10 years. The maximum total payments allowed is either \$250,000 or the value of the land without an easement, whichever is less. The program also provides up to 100% cost share for implementing the program.

Situation

Currently, the CRP is the only program funded and fully operational. Implementation of the others depends on funding and development of regulations and procedures. The AWQIP will probably be on line soon. There is some question about WRP, but it is expected to be on line late in 1992.

COMPLIANCE PROGRAMS

Two major provisions of the 1990 Farm Bill must be complied with by farm owners and managers who wish to participate in federal farm programs: the Conservation Compliance and Swampbuster provisions. The programs that could be affected by non-compliance with these provisions are most USDA incentive programs, such as CRP, Acreage Reserve Programs, and the tobacco program. Loans or loan guarantees through the Farmers Home Administration are also affected. Farm owners and operators who wish to participate in the incentive programs should learn about the compliance programs; they need to be sure they are in compliance with them so they don't lose benefits.

Conservation Compliance

The conservation compliance provisions of the 1985 Farm Bill became effective January 1, 1990. Basically, they required farmers who produced agricultural commodities on highly erodible land to do so under an approved conservation plan. Farmers who complied with this requirement have until January 1, 1995 to fully implement their plans.

The 1990 law continues conservation compliance with only minor changes. Non-commercial agricultural crops on areas of two acres or less (primarily garden plots) are exempted. Provisions have been extended to include set aside acres that include highly erodible land. Farmers with land coming out of CRP contracts will have two years to implement conservation plans if structures are required.

Those farmers who did not have a conservation plan developed by January 1, 1990, but would like to become eligible for the affected USDA programs may still do so. They essentially would fall under the old "Sodbuster" provisions, which require that a conservation plan be developed and implemented before the farm can regain eligibility.

Swampbuster

Under the 1985 Farm Bill, anyone who drains, dredges, levels, or alters a wetland and plants an annual crop will lose USDA program benefits. The 1990 law continues the swampbuster provisions with one major difference: landowners will be in non-compliance with the current provisions if they drain,

dredge, fill, level, or otherwise alter wetlands for the purpose, or which has the effect, of making the production of an agricultural commodity possible. It does not depend on the actual planting of a crop. Some exemptions may be granted by ASCS if requested in advance by the landowner.

There is a provision for converting a wetland if it can be replaced by restoring a prior-converted wetland in accordance with a restoration plan which provides an equivalent wetland value. Producers must agree to protect the restored wetland through an easement which remains in effect as long as the newly-converted wetland remains in use. Wetlands may be subject to other restrictions administered by the U.S. Army Corps of Engineers or the Kentucky Division of Fish and Wildlife. Landowners should check with these agencies before altering wetlands.

Wetlands have been identified on farm maps and owners have been notified. Farmers may appeal wetland designations at any time. If a violation is suspected, benefits cannot be denied until an on-site inspection is made.

Penalties for Non-compliance

Those who receive benefits through USDA programs must certify each year that they are complying with the conservation provisions. This is done by completing form AD-1026 at the local ASCS county office where benefits are first applied for. This is a self-certification process, but inspectors may visit the farm for confirmation.

The 1990 law somewhat changes penalties for non-compliance. Loss of benefits has

been extended to cover most USDA programs, so more farmers and farm managers are likely to be affected. Also, graduated penalties have been established to cover unintentional violations. In conservation compliance, producers are allowed one violation in 5 years with fines ranging from \$500 to \$5,000 depending on the severity of the violation. In the case of swampbuster, one violation is allowed in 10 years with fines ranging from \$750 to \$10,000. Also, the affected wetland must be restored before eligibility can be regained. Exemptions may be provided for violations of conservation compliance that are minor; for circumstances beyond a producer's control; and for some specific problems.

There are some changes in who is affected by non-compliance. For example, a tenant's program ineligibility due to non-compliance may be limited to the farm where the violation occurred if the tenant made a good faith effort to comply but was unable to because of the landowner's refusal.

For answers to specific questions, contact the local Soil Conservation Service, Agricultural Stabilization Conservation Service, or Cooperative Extension Service Office.

Educational programs of the Kentucky Cooperative Extension Service serve all people regardless of race, color, age, sex, religion, disability, or national origin. Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture, C. Oran Little, Director of Cooperative Extension Service, University of Kentucky College of Agriculture, Lexington, and Kentucky State University, Frankfort. Copyright © 1997 by the University of Kentucky Cooperative Extension Service. This publication may be reproduced in portions or its entirety for educational or non-profit purposes only. Permitted users shall give credit to the author(s) and include this copyright notice.

Issuedd 3-92, 300 file copies