

***FAQ's (Frequently Asked Questions) About the Agriculture Water Quality Act****Second in a Series**September, 1997*

This fact sheet has been developed to provide simple answers to some of the issues surrounding Kentucky's Agriculture Water Quality Act. Please note that these are broad, general answers, and they may not apply to every situation. Producers with more complicated situations should obtain help in answering their questions. The first issue in this series was developed in January, 1997.

**** What happens if I don't have a Water Quality Plan in the year 2001?***

Kentucky's Agriculture Water Quality Act found in KRS 224.71-100 *et. seq.* requires all agriculture operations to develop and implement a water quality plan by the year 2001. You must implement the requirements of the statewide plan by the year 2001. If you do not implement the plan, you will be in violation of Kentucky's environmental laws and may be subject to fines and penalties under KRS 224.99-010. Even if water pollution does not occur on your land, you are still in violation of the law if you don't have a plan. If a water pollution problem does occur on your land, you will lose the protection that the Plan provides for people who are attempting to minimize pollution by implementing a plan. You may be subject to additional fines and penalties that you would not have encountered if you had a plan. Fortunately, many resources are available right now to assist you in developing and implementing your plan. These resources are included in the State Plan and the Producer Workbook.

**** Can I only use the Best Management Practices in the statewide plan or are other practices acceptable?***

In general, you must use the practices outlined in the state plan. Procedures have been developed to allow permission to engage in alternative or experimental practices that deviate from the Agriculture Water Quality Plan. Any practice you utilize must be as protective of water quality as the Best Management Practice found in the Plan. The practice must be registered with the Agriculture Water Quality Authority. For further information as to how to receive this variance, you may contact the Kentucky Division of Conservation at 502/564-3080. They can send you a copy of the procedure that will permit you to deviate from the Plan. Keep in mind, of course, that the BMP's in the state plan are fairly flexible and do offer a variety of ways to come to compliance with the Plan itself.

**** Is my farm an "agriculture operation" governed by this Act?***

The Act specifically defines an 'agriculture operation' as any farm or operation on 10 contiguous acres or more land used for agriculture or silviculture, or devoted to meeting the requirements and qualification for payments from agriculture programs under an agreement with the state and federal government.

If you have trees growing on ten acres that were not planted for the purpose of silviculture and you do not intend to harvest, then you are not involved in an agriculture operation. However, if the operation plans on harvesting these trees, or if the trees are being managed for harvest, then you do have a silviculture operation that is governed by the definition of an "agriculture operation."

**** Is my farm an "agriculture operation" governed by this Act? (contd.)***

A person whose farm includes 15 acres and a horse, would probably not be engaged in an agriculture operation if the one horse was kept for the pleasure of the landowner or his family. However, if that horse is boarded for profit, it is likely that the landowner would come under the definition of an "agriculture operation," since the boarding of horses is a common agriculture operation in Kentucky.

A person who grows crops in his or her garden and sells them at a roadside stand is clearly engaging in a traditional agriculture operation. However, a person who sells tractors on their property is not, as tractors do not come under the definition of livestock, silviculture, or crops as found in the definition of "agriculture operation."

**** Can a landowner transfer his or her responsibility to comply with the Agriculture Water Quality Plan to a tenant through the terms of a lease agreement?***

Either the landlord or the tenant can design and implement a water quality plan for a particular operation. As long as an operation has a plan, the operation is in compliance. The person who is ultimately responsible for complying with the Agriculture Water Quality Act will differ in different landlord and tenant situations. There are many situations in which both a landowner and a tenant can be responsible to the Agriculture Water Quality Act. Two people by contract may change their respective responsibilities to each other, but cannot change their ultimate responsibility to the state. A landowner and a tenant, between themselves, can agree as to who will develop and implement the plan. If water pollution occurs, the two parties can apportion their liabilities and rights as against each other. If both parties are initially responsible to the state, the state will hold parties liable. If the parties have by contract agreed otherwise, one may have a private law suit against the other for violating the contract, but both remain responsible to the state.

**** Is a farmer responsible for an open dump on his property?***

A farmer as a landowner is responsible for an open dump containing ordinary household or land clearing garbage on the property unless that farmer can show he or she did not create the dump or knowingly allow others to dump on the property. If the farmer finds others dumping on the property, he or she immediately needs to contact both local authorities and the Natural Resources and Environmental Protection Cabinet to report this violation of the law. This will also assure that authorities know the farmer did not create the dump. The Cabinet may also help stop the guilty party. If the dump contains something other than household garbage or yard waste, the situation becomes more complicated. In that case, the farmer needs to contact the Division of Waste Management at 502/564-6716 for further information. Some important factors to keep in mind:

If someone is trespassing on your property and dumping on it, remember to check your insurance policy to see if that policy will assist you in cleaning up the mess.

If what is being dumped is not ordinary household garbage, be aware that certain chemicals and other substances can cause severe contamination to soils and waters on the property and need to be cleaned up immediately before the contamination spreads.

Do not buy property until any dump on it has been cleaned up or until you know the cost and are willing to undertake the cleanup.

**** What are my responsibilities if I have an underground petroleum storage tank on my property?***

Any fuel tank on the farm that has a capacity less than 1,100 gallons is not covered by the Cabinet's general underground storage tank program. If that tank has not leaked, it can stay where it is. However, a landowner should keep in mind that it is sometimes difficult to sell

property with an underground storage tank on it, even if that tank has not leaked. It's a good idea to try to officially close the tank through the Cabinet particularly if you might sell the property. A leaking tank is required to be cleaned up by the landowner, regardless of its size. The Division of Waste Management can assist the farmer with information as to what steps need to be taken to close a tank and correct the effects on the environment of a tank that has leaked. The Division can also provide instructions on paperwork that the farmer will need to submit in order to receive a letter documenting the tank has been closed or cleaned up. For information, contact the Division of Waste Management Superfund Branch - Petroleum Cleanup Section at 502/564-6716. Several steps need to be taken to close a tank and cannot be outlined here, although information can be obtained from the Division of Waste Management.

[The Agriculture Water Quality Act only governs water pollution resulting from agriculture and silviculture activities. Solid waste and petroleum disposal matters not related to water quality are not covered by the Act.]

*** Why should I write a water quality plan?**

The goal of the Agriculture Water Quality Act is to protect surface and ground water from potential pollutants as a result of agriculture operations. The quality of our water resources should be maintained at a high level to (1) reduce the costs of treating drinking water; (2) provide adequate opportunity for recreational activities; and (3) keep any pathogen transmission through water to a minimum. Following the BMP's listed in the state water quality plan will encourage a continued reduction of potential pollutants from reaching our water resources.

Within five years of the approval of the state-wide agriculture water quality plan (approval received October 23, 1996), persons engaged in agriculture operations across the state shall implement the requirements of the state-wide plan. A water quality plan will be

required to be eligible for the state cost share program administered through local conservation districts. If you do not have a water quality plan in place, you will be subject to enforcement procedures by the Division of Water.

*** What constitutes non-compliance with the Act?**

There are two (2) ways to be in non-compliance:

1. The Division of Water documents that a person engaged in agriculture operations is conducting or allowing the conduct of any agriculture operation in a manner that results in water pollution.

OR...

2. A person fails to implement the provisions of the applicable water quality plan.

*** Who will help me develop my plan or answer questions I may have?**

A number of agencies at both the local and state level can provide assistance and answer your questions regarding the Agriculture Water Quality Act. These agencies include:

Kentucky Cooperative Extension Service
Local Conservation District Boards
Kentucky Division of Conservation
Natural Resource Conservation Service
Farm Service Agency
Kentucky Division of Water
Kentucky Division of Forestry
Kentucky Division of Waste Management
Kentucky Department of Health Services
Local County Health Departments

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