

# **COOPERATOR NON-COMPLIANCE WITH MAINTENANCE REQUIREMENTS FOR COST SHARE CONTRACTS**

## **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.

## **STATEMENT OF POLICY**

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

1. For cost share practices:
  - a. First time found out of compliance – district sends written warning by certified mail within 30 calendar days to cooperator with notification to correct non-compliance within 30 calendar days, or repay a prorated amount of contracted funds (with reasonable consideration for vegetation re-establishment up to 12 months);
  - b. If cooperator restored compliance, but was found out of compliance a second time, then the district must require cooperator to repay pro-rated funds.
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.

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

## COMMISSION GUIDANCE ON COMPLIANCE SCENARIOS

SCENARIO	RESOLUTION
Farmer goes out of dairy business two years after receiving cost share for dry stack, stock trail and watering tank. Farmer begins tobacco farming on same site. He converts dry stack to tobacco barn, stock trail to floor of greenhouse, and watering tank to reservoir for irrigating tobacco seedlings. Has farmer violated the Cost Share maintenance agreement and does the farmer owe anything to the program?	The farmer has violated the maintenance agreement because he has converted the uses of the BMPs from their intended uses. He has also realized a personal gain with tax payers' funds not authorized by statute. The farmer owes a pro-rated refund as determined from the date the BMPs were found out of compliance.
Farmer receives Cost Share funds for honey wagon. Within a few months, he is renting out his honey wagon to other farmers so he can "recoup" his 25% contribution. Is farmer in compliance by using Cost Shared equipment for his personal gain?	The farmer is using the equipment for personal gain and not in accordance with the state. Renting out cost shared equipment is not allowed and the farmer must be told to immediately halt this activity. Otherwise, a farmer may loan cost shared equipment to another farmer on an emergency basis, but the farmer who owns the equipment is liable for repairs at his own expense.
Farmer goes out of swine business. She received Cost Share for a solid set. Must she continue to maintain the solid set and be able to show that it works properly until end of maintenance period to avoid pro-rated repayment of Cost Share funds received?	This farmer must maintain the solid set if the lagoon is still being maintained, under the assumption that animals can be brought back onto the property at any time. If the lagoon has been closed, then the District should request that the Commission cancel the balance of the maintenance period.
Farmer received Cost Share for a dry stack on his dairy operation. He is still in business but uses the dry stack during the "off season" for uses not related to waste storage. Is he still in compliance?	No, the farmer is not in compliance. There is no way to give equitable guidance on when and how off season uses will be found acceptable that will cover all situations.
Farmer sells her property which includes Cost Shared BMPs installed this year. Is the farmer obligated to repay any Cost Share funds?	Beginning with PY 97 contracts, the farmer is obligated to repay a pro-rated amount if she cannot secure a written agreement from the buyer that the buyer will maintain the BMPs for the remaining maintenance period (see Maintenance Transfer form - Section VI).

<p>Farmer receives Cost Share for a large traveling gun on a swine operation and then goes out of the swine business. He still has a row crop operation. What should happen to the Cost Shared traveling gun?</p>	<p>The farmer must maintain the traveling gun for the life of the practice. If the traveling gun is sold, a pro-rated payment is to be made to the program.</p>
<p>Farmer receives Cost Share for a pump and honey wagon. The swine operation folds and the farmer converts her operation to row crops. What happens to the pump and honey wagon?</p>	<p>The farmer must maintain the pump and honey wagon for the life of the practice. If they are sold, a pro-rated payment is to be made to the program.</p>
<p>Farmer receives Cost Share for a composter. He later adds an incinerator for disposal of large size dead birds. His integrator wants him to grow smaller poultry than his system was originally designed for. Because of smaller flock weight and using an incinerator, his composter is not being totally utilized. What is his responsibility to the program?</p>	<p>The composter must be maintained for its intended use even though some bins may remain empty. In this situation, the Division must be notified so the contract can be updated prior to beginning use of the incinerator.</p>
<p>Farmer receives Cost Share for a poultry composter. She later adds an incinerator inside the composter. Is this a violation of the maintenance agreement of the Cost Share contract?</p>	<p>This may not be a violation of the maintenance agreement. However, the District must receive prior approval from the Division and must demonstrate greater water quality benefits from the conversion of the composter in order to be in compliance with the contract.</p>
<p>Farmer is paid for 30 acres of cropland conversion to grass. The farmer has installed perimeter fencing and a watering tank to allow cattle onto the site for grazing grass in this animal waste application field. The cattle have denuded the ground around the watering tank. The farmer wants to repay the program a pro-rated amount so that he won't have to reestablish the vegetation. Does he owe a pro-rated amount of just the area that has been denuded?</p>	<p>Farmer owes a pro-rated amount of the entire BMP because the cattle are allowed access to the entire acreage. If the cattle can be fenced into just the area that has been denuded so that the integrity of the remaining BMP is protected than a pro-rated amount of just that area can be repaid. However, it is not likely that the cattle can be confined to such a small area. Further, the farmer has created a new water quality problem at this site.</p>
<p>Farmer was paid for 17 acres of cropland conversion to grass. Now she wants to reclaim 2 contiguous acres to establish strawberry field. Does she owe a pro-rated amount of the 17 acres or does she repay just the 2 acres?</p>	<p>Repayment is figured on just the two acres being used for the strawberry field.</p>