



## Kentucky Agriculture Water Quality Act

### Background for the Kentucky Agriculture Water Quality Authority

Kentucky has a unique tool in the Agriculture Water Quality Act for managing nutrients, and other pollutants from agricultural sources. The Agriculture Water Quality Act plays a substantial role in implementing Kentucky's Nutrient Reduction Strategy.

#### What is the Agriculture Water Quality Act?

- The Kentucky General Assembly passed the Kentucky Agriculture Water Quality Act in 1994. The goal of the act is to protect surface and groundwater resources from pollution as a result of agriculture and silviculture (forestry) activities.
- The Kentucky Agriculture Water Quality Act (KRS 224.71-100 through 224.71-145; [Kentucky Agriculture Water Quality Act](#)) was enacted by the 1994 General Assembly. This historic and comprehensive law guides the state's agriculture and silviculture industries in efforts to address water quality issues associated with agriculture and silviculture.
- The Kentucky Agriculture Water Quality Act created the Kentucky Agriculture Water Quality Authority.
- The Agriculture Water Quality Authority consists of member farmer and industry representatives, and state agencies and organizations. A list of Agriculture Water Quality Authority appointees is presented below.
- The responsibilities of the Agriculture Water Quality Authority are to:
  - Establish committees to address issues relating to livestock, crops, pesticides and fertilizers, and farmsteads.
  - Review water quality data, as available
  - Review university research on water quality and best management practices
  - Evaluate the adoption and effectiveness of best-management practices, and modify best-management practice design standards to improve water quality protection practice
  - Develop by July 1, 1996, statewide agriculture water quality plans to address identifiable water pollution problems from agriculture operations, and continue to evaluate and modify the agriculture water quality plans, as necessary to prevent water pollution from agriculture operations
    - The statewide agriculture water quality plan can be found at: [Kentucky Agriculture Water Quality Plan](#)
  - Assist with the review of state-funded and other water quality monitoring data and with the establishment of agriculture water priority protection regions

- Provide technical assistance to persons engaged in agriculture operations and to NRCS
- Work with the NRCS and conservation districts to disseminate to agriculture operations the best-management practices, conservation plans, compliance plans, forest stewardship management plans, and agriculture water quality plans which address the protection of groundwater and surface water
- Provide the Governor and the Legislative Research Commission with biennial reports of the progress of the Agriculture Water Quality Authority program
- Establish procedures for modifications to be incorporated into statewide or regional agriculture water quality plans.
- Establish priority protection areas
- The Division of Water approves or disapproves the statewide and regional water quality plan and any amendments of these plans.

#### **Who does the Agriculture Water Quality Act affect?**

- The Agriculture Water Quality Act requires all landowner/land users with ten (10) or more acres that are being used for agriculture or silviculture operations to develop and implement a water quality plan based upon guidance from the Kentucky Agriculture Water Quality Plan.

#### **How are agriculture and silviculture defined under the Agriculture Water Quality Act?**

- "Agriculture operation" means any farm operation on a tract of land, including all income producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, situated on ten (10) contiguous acres or more of land used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruits and vegetables, or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.
- "Silviculture" generally means that part of forestry that involves growing and harvesting of trees.

#### **What is the Kentucky Agriculture Water Quality Plan?**

- The Kentucky Agriculture Water Quality Plan consists of best management practices from six different areas - Silviculture, Pesticides and Fertilizers, Farmstead, Crops, Livestock, and Streams and Other Waters. Each BMP includes definitions and descriptions, regulatory requirements, Agriculture Water Quality Authority requirements, design information, practice maintenance, technical assistance, cost share assistance, recommendations and references. This statewide plan will serve as a guide to individual landowners/land users as they develop water quality plans for their individual operations.

### **What is the process for developing and implementing an individual water quality plan?**

- Individual landowners/land users must fully implement applicable requirements of the Kentucky Agriculture Water Quality Plan by October 23, 2001. Various tools are available to help landowners develop their plan. The University of Kentucky College of Agriculture web site contains an on-line tool ([Kentucky Agriculture Water Quality Act Planning Tool](#)) to be used by landowners to assess their operation and identify best management practices to be included in their individual plan. After identifying the best management practices, landowners/land users implement these practices on their land. Assistance to implement the plan can be obtained through a variety of technical agencies

### **How is the Compliance with the Agriculture Water Quality Act managed?**

- The Division of Water is charged with the responsibility to ensure compliance with the Agriculture Water Quality Act ([Noncompliance with agriculture water quality plan](#)).
- This approach is carried out via the Division's Agriculture Water Quality Act Corrective Measures Protocols
- The Corrective Measures Protocols have been used to resolve hundreds of issues at >97% success rate.
  - Consensus approach with agriculture community
  - Provides accountability and
  - Makes available technical and financial assistance to agriculture producers with problems
    - Technical: Conservation District obligated to provide assistance
    - Division of Conservation sets aside 10% of cost-share funds to address issues
- Reasons for a Division of Water inspection
  - Routine inspection of a permitting agriculture facility
  - Response to a complaint
- DOW Inspectors will:
  - Ensure that an Agriculture Water Quality Plan has been completed and properly implemented (this may require consult with Conservation District, etc.)
  - Determine whether the Agriculture Water Quality Plan is adequately protecting waters of the Commonwealth (largely visual or via other monitoring that conditions call for)
- Common reasons for DOW actions (i.e. notification, Letter of Warning (LOW) or Notice of Violation (NOV):
  - AWQP not developed and/or properly implemented
  - Water quality violation or imminent violation
- DOW protocol for taking action
  - Direct owner/operator to seek assistance from the Conservation District.
  - Lack of AWQP or improper implementation
    - → 90 day deadline, must contact Conservation District within 35 days
  - Water quality violation or imminent violation
    - → timeline TBD, must contact Conservation District to develop a Corrective Measures Plan

- Notify the local Conservation District of the issue.
- Conduct a follow-up inspection unless the Conservation District notifies DOW that the issue has been resolved to their satisfaction.
- Conservation District Responsibilities:
  - CD Board Chairman to notify owner/operator of intent to address the problem.
  - Outline, in writing, options available for technical and financial assistance and consequences for non-compliance; copy DOW.
  - Notify DOW if/when issues are resolved.
  - Coordinate with DOW on necessary follow-up inspections.
- Reasons for Enforcement:
  - Failure to seek assistance with development or implementation of AWQP
  - Failure to develop or implement a Corrective Measures Plan
  - Water Quality violations
- Consequences of non-compliance:
  - DOW Enforcement actions (KRS 224.70-100 to 224.71-140)
  - Bad Actor Provisions (KRS 224.71-130(2))
    - If any person engaged in agriculture operations fails or refuses to comply or respond to the written notice, unless excused or extended by the Division of Water, the person shall be deemed a "bad actor" and shall be subject to enforcement action for violations of KRS 224.71-100 to 224.71-140 as well as loss of eligibility for further financial assistance.