

**CHAPTER 523 – AGRICULTURAL AND SILVICULTURAL
WATER QUALITY MANAGEMENT
§§523.1 – 523.8**

§523.1 Scope and Jurisdiction

The Texas State Soil and Water Conservation Board (state board) is the lead agency in this state for activity relating to abating agricultural and silvicultural nonpoint source pollution.

(1) Nonpoint source pollution is pollution caused by diffuse sources that are not regulated as point sources and normally is associated with agricultural, silvicultural, and urban runoff, runoff from construction activities, etc. Such pollution is the result of human-made or human-induced alteration of the chemical, physical, biological, and radiological integrity of water. In practical terms nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation. Pollution from nonpoint sources occurs when the rate at which pollutant materials entering water bodies or groundwater exceeds natural rates or total loadings exceed natural loadings.

(A) Possible nonpoint source pollutants associated with agricultural and silvicultural activities include nutrients, pesticides, organic matter, sediment, and animal wastes. These pollutants may be transported to surface waters in solution with runoff water, suspended in runoff water, or adsorbed on eroded soil particles. The primary concern about agricultural and silvicultural impacts on groundwater relate to use of pesticides, nutrients and potential leaching of these compounds to groundwater or surface runoff entering groundwater through avenues such as abandoned and improperly constructed wells.

(B) Animal feeding operations may be considered as point or nonpoint sources depending on size, location, and other considerations. For the purposes of these rules, all animal feeding operations not required to obtain a permit from the Texas Commission on Environmental Quality will be nonpoint sources.

(2) Agriculture includes, but is not limited to, the following activities: cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture; viticulture; horticulture; aquaculture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(3) Silviculture includes, but is not limited to, the following activities: practices to establish, nurture, protect, and enhance the desired growth of trees for human and/or wildlife benefit; natural or planted afforestation; the propagation and culture of tree seedlings, tree saplings, and Christmas trees; controlling, suppressing, or culling unwanted woody or herbaceous vegetation in a forested area; establishing and/or maintaining strips or belts of trees for purposes of providing wildlife habitat, wind breaks, or riparian buffers; construction and

maintenance of roads and fire lanes; practices and operations that facilitate the harvesting, handling, and removing timber products from a site where they were grown.

Effective June 21, 2006

§523.2 Identification of Problem Areas

(a) On its own petition or on the petition of a soil and water conservation district, the state board may delineate an area having the potential to develop agricultural or silvicultural nonpoint source water pollution problems.

(b) Problem areas may be delineated based on the following criteria:

- (1) data and information submitted by soil and water conservation districts;
- (2) data and information obtained by the state board;
- (3) studies conducted by the state board or soil and water conservation districts;

(4) assessments, special studies, and programs and research conducted relative to surface and underground water quality pursuant to the Federal Clean Water Act, §§106, 305b, 314, and 319; the Coastal Zone Act Reauthorization Amendments (CZARA), §6217; the National Estuary Program; the Federal Insecticide, Fungicide, and Rodenticide Act; the Texas Water Code, §26.0135; the Texas Clean Rivers Program and data and information collected or obtained by other local, state, or federal governmental entities;

- (5) guidelines developed and promulgated by the state board.

(c) Allocation of resources will be based on priority considerations. In allocating program resources, the state board will consider the following:

(1) first, known problems, where the state board has determined that adequate data show the existence of a water quality problem caused by agricultural or silvicultural nonpoint sources;

(2) second, potential problems, where the state board has determined that the intensity and location of certain agricultural and silvicultural activities requires program implementation to prevent pollution problems caused by agricultural and silvicultural nonpoint source activities;

(3) third, corrective action plans needing to be implemented, the economic impact on producers, and benefits to water quality.

Effective December 22, 1993

§523.3 Water Quality Management Plans

(a) A water quality management plan is a site specific plan for agricultural or silvicultural lands which includes appropriate land treatment practices, production practices, management measures, technologies or combinations thereof which when implemented will achieve a level of pollution prevention or abatement determined by the State Board in consultation with the local soil and water conservation district and Texas Commission on Environmental Quality to be consistent with state water quality standards. To be certified, a water quality management plan must meet the resource quality criteria for water quality and cover all lands whether contiguous or non-contiguous that constitutes an operating unit for agricultural or silvicultural purposes.

(b) A water quality management plan should be modified when there is a land use change of any part of the operating unit; an addition or deletion of significant acreage to or from the operating unit covered by the water quality management plan; alteration of planned permanent practice measures including addition or deletion of such; changes identified by research and advanced technology as being needed to meet water quality standards; or when more stringent measures become necessary to meet water quality standards.

(c) Process for obtaining a Water Quality Management Plan.

(1) Landowners and operators may request the development of a plan or plan modification by the local soil and water conservation district. Landowners and operators, following consultation with their soil and water conservation district, will be encouraged and aided in working with the district in the preparation of a plan or plan modification based on standards adopted by the State Board to prevent or abate their nonpoint source pollution.

(2) The soil and water conservation district will determine the priority of plan development or plan modification and subsequently cause the development and approval of the plan or plan modification.

(3) Landowners and operators may appeal district decisions relative to practices and practice standards to the State Board in the manner prescribed by the Board.

(4) When determined to be consistent with state water quality standards, taking into account the state of existing technology, economic feasibility and water quality needs, the State Board will certify the plan or plan modification.

(d) Practice selection.

(1) Practices eligible for water quality management planning will be selected by the State Board in consultation with the soil and water conservation district.

(2) Practices will address activities determined by the State Board in consultation with the soil and water conservation district to be in need of pollution prevention or abatement.

(3) Insofar as practicable, those practices shall be consistent with the Agricultural and Silvicultural Nonpoint Source Management Program developed by the State Board pursuant to the Federal Clean Water Act, §319 and CZARA §6217.

(e) Practice standards.

(1) Practice standards will be based on specific local conditions.

(2) Practice standards will be based on criteria in the Natural Resources Conservation Service, Field Office Technical Guide; however, modification of those practice standards to ensure consistency with state water quality standards and the state agricultural and silvicultural nonpoint source management program will be made as necessary.

(3) Practice standards will be developed in consultation with the local soil and water conservation district, with assistance and advice of the USDA, the Natural Resources Conservation Service, Texas Cooperative Extension, Texas Forest Service, Texas Agricultural Experiment Station, Texas Commission on Environmental Quality, the local underground water conservation district and others as determined to be needed by the State Board.

(f) Implementation schedule.

(1) A water quality management plan must contain an implementation schedule.

(2) The implementation schedule will, as far as is practicable, balance the state's need for protecting water quality with need of agricultural and silvicultural producers to have sufficient time to implement practices in an economically feasible manner.

(3) Highest priority will be given to the implementation of the most cost effective and most needed pollution abatement practices.

(4) The State Board in consultation with affected soil and water conservation districts will conduct status reviews of plan implementation.

(5) The State Board in consultation with the local soil and water conservation districts may withdraw certification of a water quality management plan that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and provided a reasonable period of time to implement the water quality management plan according to the schedule or a modified schedule approved by the soil and water conservation district.

(6) The holder of a certified water quality management plan shall notify the local soil and water conservation district in the event he or she deviates from the implementation schedule.

(g) Applicability of state water quality standards. To the extent allowed by available technology, water quality management plan development, approval and certification will be based on state water quality standards as established by the Texas Commission on Environmental Quality.

(h) Water Quality Management Plans for Poultry Facilities.

(1) After September 1, 2001 in accordance with the schedule in paragraph (2) of this subsection, all poultry facilities producing poultry for commercial purposes will be required to develop and implement a certified water quality management plan covering the poultry operating unit.

(2) Poultry facilities must request development and certification of a water quality management plan according to the following:

| Date of initial operation of facility | Plan submission date |
|--|-------------------------|
| January 1, 2002, or later | Before receipt of birds |
| September 1, 2001 to December 31, 2001 | Before January 1, 2002 |
| January 1, 1993 to August 31, 2001 | Before January 1, 2002 |
| January 1, 1988 to December 31, 1992 | Before January 1, 2003 |
| January 1, 1983 to December 31, 1987 | Before January 1, 2005 |
| December 31, 1982 or earlier | Before January 1, 2008 |

(3) Poultry facilities may obtain a water quality management plan as prescribed in subsections (a) - (f).

(4) The Texas State Soil and Water Conservation Board (State Board) will maintain a listing of poultry facilities that have requested a certified water quality management plan. The list will indicate date of plan approval by the soil and water conservation district and date of certification by the State Board. The listing will also indicate status of implementation.

(5) The State Board in consultation with the local soil and water conservation district will conduct status reviews of certified water quality management plans covering poultry facilities on a schedule determined by the State Board.

(6) The State Board, in consultation with the local soil and water conservation district may withdraw certification of a water quality management plan that is not being implemented according to its schedule. Prior to certification being withdrawn, the owner/operator of the facilities will be notified and provided a reasonable period of time, as determined by the State Board, to implement the water quality management plan, which may, at the discretion of the local district in accordance with State Board guidance be modified to allow implementation to occur.

(7) The list developed and maintained under paragraph (4) of this subsection will be made available to the Texas Commission on Environmental Quality.

(8) Landowners and operators after consultation with the district may appeal district decisions to the State Board.

Effective June 21, 2006

§523.4 Resolution of Complaints

Complaints concerning the violation of a Water Quality Management Plan or a violation of a law or rule relating to nonpoint source pollution will be addressed as follows.

(1) The State Board will investigate complaints regarding:

(A) agricultural and silvicultural nonpoint sources;

(B) operations with a certified Water Quality Management Plan;

(C) operations that have applied for a Water Quality Management Plan;

(D) nonpoint source problems related to operations needing a Water Quality Management Plan; and

(E) general complaints regarding agricultural and silvicultural nonpoint source related pollution.

(2) Determination of the need for action.

(A) The State Board in consultation with the soil and water conservation district will make a determination relative to the need for action.

(B) To the extent practicable, the complainant will be interviewed by the State Board and the soil and water conservation district prior to an investigation.

(C) The State Board in consultation with the local soil and water conservation district will, based on complainant interviews and investigations, including a review of Water Quality Management Plans on file with the State Board and/or the soil and water conservation district, determine whether or not the need for corrective action exists.

(D) The State Board will inform the complainant of the outcome of a determination upon completion of the investigation and it is determined whether the need for corrective action exists.

(E) Upon completion of an investigation by the State Board and all pertinent soil and water conservation districts, and provision of the final investigative determination to all complainants and operators interviewed and investigated, any complainant or operator interviewed or investigated shall be provided an opportunity for a hearing before members of the soil and water conservation district or districts involved in the investigation.

(F) Subsequent to a hearing before members of the local soil and water conservation district or districts involved in the investigation, any complainant or operator interviewed or investigated may request a hearing before the State Board. The State Board may provide for the requested hearing at its discretion.

(3) Corrective action plan. Once the determination of the need for action is made, a corrective action plan will be developed.

(A) The corrective action plan must meet all requirements of a certified Water Quality Management Plan.

(B) The corrective action plan will be developed in consultation with the soil and water conservation district in the same manner as a water quality management plan is developed.

(C) The corrective action plan will be developed with the technical assistance from the Natural Resources Conservation Service, Texas Cooperative Extension, Texas Forest Service, the local underground water conservation district, and/or State Board as appropriate.

(4) If the person upon whom the complaint was filed fails or refuses to take warranted corrective action within 45 days of notification of the outcome of the investigation, the State Board shall refer the complaint to the Texas Commission on Environmental Quality.

Effective June 21, 2006

§523.5 Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality

The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

Effective March 21, 2004

§523.6 Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures

(a) Purpose. The purpose of this program is to provide the needed incentive to landowners or operators for the installation of soil and water conservation land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality.

(b) Definitions. For the purposes of these rules the following definitions shall apply.

(1) Allocated funds - Funds budgeted through the State Board to a SWCD for cost-share assistance.

(2) Applicant - A person(s) who applies for cost-share assistance from the SWCD.

(3) Available funds - Monies budgeted, unobligated and approved by the State Board for cost-share assistance.

(4) Conservation land treatment measure(s) - The measure(s) approved by the State Board and applied to the land to control soil erosion or improve the quality and/or quantity of water.

(5) Cost-share assistance - An award of money made to an eligible person for conservation land improvement measures pursuant to the terms of Senate Bill 503, 73rd Texas Legislature.

(6) District director - A member of the governing board of a SWCD.

(7) Eligible land - Those lands that are eligible for application of conservation land improvement measures using cost-share assistance.

(8) Eligible person - Any of the land holders eligible to apply for cost-share assistance or any person designated to represent the applicant as provided by a durable power of attorney, court order or other valid legal document.

(9) Eligible practices - Those conservation land improvement measures that have been approved by the State Board.

(10) Landowner - Any person, firm or corporation holding title to land lying within a SWCD.

(11) Maintenance agreement - A written agreement between the eligible person and the SWCD wherein the eligible person(s) agrees, as a condition of the receipt of State cost-share funds, to implement and maintain all measure(s) in the certified water quality management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the practice as established

by the State Board or for a period of two years after the certified water quality management plan is completely implemented, whichever period of time is longer.

(12) Obligated funds - Monies from a SWCD's allocated funds which have been committed to an applicant after final approval of the application.

(13) Operating Unit - Land, whether contiguous or noncontiguous, owned and/or operated by the applicant as an independent management unit for agricultural or silvicultural purposes.

(14) Performance agreement - A written agreement between the eligible person and the SWCD wherein the eligible person agrees to perform conservation land improvement measures for which allocated funds are being paid.

(15) Priority system - The system devised by the SWCD, under guidelines of the State Board, for ranking approved conservation land treatment measures and for facilitating the disbursement of allocated funds in line with the SWCD's priorities.

(16) Program year - The period from September 1 to August 31.

(17) Soil and water conservation district, herein referred to as SWCD - A government subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code of Texas.

(18) State Board - The Texas State Soil and Water Conservation Board organized pursuant to the provisions of Chapter 201 of the Agriculture Code of Texas.

(c) Responsibilities.

(1) The State Board shall:

(A) Establish a procedure to allocate funds to designated SWCDs for their use in cost-share assistance.

(B) Establish conservation land treatment measures eligible for cost-share and their standards, specifications, maintenance and expected life.

(C) Establish maximum cost-share rate for each conservation land treatment measure approved for cost-share.

(D) Establish the minimum cost-share assistance prior to September 1 each year that may be made under the program and the maximum cost-share assistance that an eligible person may receive under the program in any one year.

(E) Perform clerical, administrative and record-keeping responsibilities required for carrying out the cost-share program.

(F) Receive and maintain monthly reports from SWCDs showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month.

(G) Receive requests for reallocated funds and funds reverted from participating SWCDs.

(H) Act on appeals filed by applicants.

(I) Process vouchers and issue warrants for cost-share to eligible recipients.

(2) The SWCDs shall:

(A) Designate, from State Board approved list, those conservation land treatment measures that will be eligible for cost-share in their SWCD.

(B) Administer the cost-share program within the funds allocated by the State Board.

(C) Establish, under guidelines of the State Board, the priority system to be used for evaluation of applications.

(D) Establish the period(s) of time for accepting applications and announce the cost-share program locally.

(E) Accept and process cost-share applications.

(F) Determine eligibility of lands and persons for cost-share assistance under guidelines established by the State Board.

(G) Notify applicants of the district's decisions on approval of applications.

(H) Approved applications will be filed in the Districts copy of the applicant's Water Quality Management Plan.

(I) Obligate allocated funds for applications receiving final approval.

(J) Provide or arrange for technical assistance to applicants, or approve applicant and provide for an alternate source of technical assistance.

(K) Certify completed conservation land treatment measures to the State Board prior to payment.

(L) Submit required reports on the unobligated balance of allocated funds and on accomplishments to the State Board.

(d) Administration of Funds.

(1) Allocation of Funds. The State Board may allocate funds appropriated from general revenue fund and other sources for cost-share assistance among particular soil and water conservation land improvement measures or among areas of the state and may adjust such allocations throughout the year as available funds and SWCD needs and priorities change in order to achieve the most efficient use of state funds. The State Board may designate a portion of the funds allocated to a SWCD to reimburse the SWCD for obligations incurred in administering the cost-share program.

(2) Requests for Allocations. SWCDs within areas designated for cost-share program must submit requests for a cost-share fund allocation to the State Board by September 1st each year.

(3) Approval of Allocations. The State Board shall consider and approve, reject or adjust SWCD requests for allocations giving consideration to relative need for funding, SWCD workload and fund balances, as well as other information deemed necessary by the State Board. Only districts for which the State Board has established an allocation are eligible to claim cost-share funds.

(e) Eligibility for Cost-Share Assistance.

(1) Eligible person. Any individual, partnership, administrator for a trust or estate, family-owned corporation, or other legal entity who as an owner, lessee, tenant, or sharecropper, participates in an agricultural or silvicultural operation and has a certified water quality management plan on an operating unit within the SWCD shall be eligible for cost-share assistance.

(2) In accordance with the terms of the maintenance agreement an eligible person may receive cost share only once for an operating unit. The State Board on a case by case, project or watershed basis in consultation with the soil and water conservation district may grant a waiver to this requirement in situations where:

(A) Research and/or advanced technology indicates a plan modification to include additional measures to meet water quality standards is needed;

(B) The operating unit is significantly increased in size by the addition of new land areas that require conservation land treatment measures in order to meet water quality standards;

(C) More stringent measures become necessary to meet water quality standards.

(D) A landowner has assumed the responsibility of a maintenance agreement in cases where the landowner was not the applicant.

(E) The life expectancy of the previously cost-shared best management practice(s) has expired.

(3) Eligible land. Any of the following categories of land shall be eligible for cost-share assistance:

(A) Land within the State that is privately owned by an eligible person.

(B) Land leased by an eligible person over which he/she has adequate control and which land is utilized as a part of his operating unit.

(C) Land owned by the State, a political subdivision of the State, or a nonprofit organization that holds land in trust for the state.

(4) Ineligible lands. Allocated funds shall not be used:

(A) To reimburse other units of government for implementing conservation land treatment measures.

(B) On privately owned land not used for agricultural or silvicultural production.

(5) Eligible purposes. Cost-share assistance shall be available only for those eligible practices measures included in an approved water quality management plan and determined to be needed by the SWCD to:

(A) Reduce erosion, and/or

(B) Improve water quality and/or quantity.

(6) Eligible practices. Conservation land treatment measures which the State Board has approved and which are included in the applicant's approved water quality management plan shall be eligible for cost-share assistance. The list of eligible practices will be approved by the State Board at the beginning of each fiscal year. The SWCDs shall designate their list of eligible practices from those practices approved by the State Board. SWCDs may request the State Board's approval to offer conservation land treatment measures not included in the State Board's list of approved practices. The use of special conservation land treatment measures is limited to those measures that can solve unique problems in a SWCD and which

conforms with one or more of the purposes of the cost-share program. Requests for special conservation land treatment measures will be filed in writing with the State Board in time to obtain action and notification in writing from the State Board of its decision(s) prior to announcing the cost-share program locally for the program year. Conservation land treatment measures may be included in a SWCD's list of eligible practices offered for cost-share assistance only as approved by the State Board.

(7) Requirement to file an application. In order to qualify for cost-share assistance, an eligible person shall file an application with the local soil and water conservation district.

(8) Persons required to sign applications and agreements. All applications and agreements shall be signed by:

(A) The eligible person and;

(B) the landowner in cases where the eligible person does not hold title to the land constituting the operating unit.

(f) Cost-Share Assistance Processing Procedures.

(1) Responsibility of applicants. Applicants for cost-share assistance for conservation land treatment measures shall:

(A) Complete and submit an application to the SWCD.

(B) Where an applicant does not have an approved water quality management plan and has not determined the anticipated total cost of the requested measure(s), he/she, as part of the application, may request assistance from the SWCD in developing such plan and determining costs.

(C) After being notified of approval and obligation of funds by the district, request technical assistance through the district to design and layout the approved practices or request approval of alternate sources of technical assistance.

(D) Secure any approved contractor(s) needed and all contractual or other agreements necessary to construct or perform the approved practice(s). Cost-share will not be allowed for work begun before the application is approved.

(E) Complete and sign performance and maintenance agreements and any amendments to those agreements.

(F) Supply the documents necessary to verify completion of the approved practice(s) along with a completed and signed certification of cost.

(2) Responsibilities of SWCDs. SWCDs shall:

(A) Establish the period(s) of time for accepting applications and announce the cost-share program locally.

(B) Accept cost-share applications at the SWCD's office.

(C) Determine eligibility of lands and persons for cost-share assistance. If an applicant's land is in more than one SWCD, the respective SWCD boards of directors will review the application and agree to oversee all works, administrate all contracts and obligate all funds from one SWCD or prorate the funding between SWCDs.

(D) Give initial approval to those applications that meet the eligibility requirements.

(E) Evaluate the initially approved applications under the SWCD's priority system and give final approval to the high priority applications that can be funded by the SWCD's allocated funds.

(F) Obligate funds for the approved conservation land treatment measures that can be funded and notify the applicants that his/her conservation land treatment measure(s) has/have been approved for cost-share and to proceed with installation. Allocated funds must be obligated by the last day of April of the fiscal year allocated. All unobligated allocations shall revert back as of May 1st of that fiscal year.

(G) Determine compliance with standards and specifications and certify completed conservation land treatment measure(s) that meet standards.

(3) Amended Applications for Allocated Funds.

(A) In the event that an adjustment to the estimated cost of conservation land treatment measure(s) is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment to his/her application for allocated funds to the SWCD for approval or denial by the SWCD.

(B) The SWCD may elect to adjust the amount of funds obligated for the conservation land treatment measures, provided funds are available, or to request additional funds from the State Board.

(C) In the event additional funds are not available, the conservation land treatment measure(s) may be redesigned, if possible, to a level commensurate with available funds, provided the redesign still meets standards established by the State Board; or the applicant can agree to assume full financial responsibility for the portion of the cost of conservation land treatment measure(s) in excess of the amount authorized.

(4) Performance Agreement. As a condition for receipt of cost-share assistance for conservation land treatment measures, the eligible person receiving the benefit of such assistance shall agree to perform those measures in accordance with standards established by Texas State Soil and Water Conservation Board. Completion of the performance agreement and the signature of the eligible person are required prior to payment.

(5) Maintenance Agreement. As a condition for receipt of cost-share assistance, the person(s) receiving the assistance shall agree to implement and maintain all measures in the certified water quality management plan consistent with its implementation schedule. The maintenance agreement shall remain in effect for a minimum period of two years after the certified water quality management plan is completely implemented for all practices except those cost-shared. The maintenance agreement shall remain in effect on cost-shared practices for the expected life of the cost-shared practice(s) as established by the State Board or for a period of two years after the certified water quality management plan is completely implemented, whichever period of time is longer. The landowner must sign the application for cost-share pursuant to subsection (e)(8)(B) of this section and assumes the responsibility of the maintenance agreement. Completion of the maintenance agreement and all appropriate signatures are required prior to payment.

(6) Payment to Recipients.

(A) The SWCD shall determine eligibility of the applicant to receive payment of cost-share assistance, and provide certification to the State Board that measure(s) have been installed consistent with established standards.

(B) The State Board shall issue warrants for payment of cost share assistance.

(7) Applications Held in Abeyance Because of Lack of Funds. In those cases where funds are not available, the applications will be held by the SWCD until allocated funds become available or until the end of the program year. When additional funds are received, the SWCD will obligate those funds. The SWCD may shift all unfunded applications held in abeyance because of lack of funds that are on hand at the end of a program to the new program year or require all new applications as it deems appropriate.

(8) Applications Denied for Reasons Other Than Lack of Funds. Applications for funds which are denied by the SWCD directors for other than lack of funds shall be retained in the records of the SWCD in accordance with the SWCD's established record retention policy. Written notification of the denial shall be provided to the applicant along with the reason(s) that the application was denied.

(9) Applications Withdrawn. An application may be withdrawn by the applicant at any time prior to receipt of cost-share assistance by notifying the SWCD in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district in accordance with the SWCD's established record retention policy.

(10) Appeals.

(A) An applicant may appeal the SWCD decisions relative to his/her application for allocated funds.

(B) The applicant shall make any appeal in writing to the SWCD which received his/her application for allocated funds and shall set forth the basis for the appeal.

(C) The SWCD shall have 60 days in which to make a decision and notify the applicant in writing.

(D) The decision of the SWCD may be appealed by the applicant to the State Board.

(E) All appeals made to the State Board shall be made in writing and shall set forth the basis for the appeal.

(F) All State Board decisions shall be final.

(g) Maintenance of Practices.

(1) Requirements for maintenance of practices applied using cost-share funds will be outlined in the eligible persons water quality management plan and reviewed with the eligible person at the time of application for cost-share.

(2) A properly executed maintenance agreement shall be signed by the successful applicant prior to receipt of payment of cost-share assistance from the SWCD for a conservation land treatment measure(s) installed.

(3) The SWCD will require refund of any or all of the cost-share paid to an eligible person when the applied conservation land treatment measure(s) has not been maintained in compliance with applicable design standards and specifications for the practice during its expected life as agreed to by the eligible person. The State Board may grant a waiver to this requirement on a case-by-case basis in consultation with the SWCD.

(4) Failed Practice Restoration.

(A) When conservation land treatment measures that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant; the applicant may apply for and district may allocate additional cost-share funds to restore them to their original design standards and specifications. These funds cannot exceed the amount of the original cost-share practice and must come from the district's current program year allocation.

(B) When conservation land treatment measures that have been successfully completed and which later fails as the result of error or omission on the part of the State Board staff, the SWCD staff, or the Natural Resources Conservation Service staff while assisting the SWCD, land not the fault of the applicant; the State Board may approve additional cost-share funds to restore the measure(s) to the correct design standards and specifications, where an investigation approved by the Executive Director or his designee shows good cause. These funds cannot exceed the amount of the original cost-share practice and must come from the district's current program year allocation.

(5) In cases of hardship, death of the participant, or at the time of transfer of ownership of land where a conservation land treatment measure(s) has been applied using cost-share assistance and the expected life assigned the practice has not expired, the participant, heir(s), or buyer(s) respectively, must agree to maintain the practice(s) or the participant, heir(s) or the buyer by agreement with seller must refund all or a portion of the cost-share funds received for the practice as determined by the SWCD. The State Board on a case by case basis in consultation with the soil and water conservation district may grant a waiver to this requirement.

(h) Determining Status of Practices During Transfer of Land Ownership

(1) A seller of agricultural land with respect to which a maintenance agreement is in effect may request the SWCD to inspect the practices. If the practices have not been removed, altered, or modified, the SWCD shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

(2) The buyer of lands covered by a maintenance agreement may also request that the SWCD inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If so, the SWCD will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

(3) The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

(i) Reporting and Accounting. The State Board shall receive and maintain required reports from SWCDs showing the unobligated balance of allocated funds as shown on each ledger at the close of the last day of each month.

(j) Pursuant to the Texas Agriculture Code, Section 201.311, one or more SWCD's may be designated to administer portions of this section as determined by the State Board.

Effective June 21, 2006

§523.7 Incentives for Composting Animal Manure

(a) Purpose. The purpose of this program is to expand the efforts and activities of the Texas State Soil and Water Conservation Board (State Board) and local Soil and Water Conservation Districts (SWCD/District) in the reduction of Nonpoint Source Pollution loadings in watersheds impacted by nutrients from agricultural activities. This program will promote the hauling of excess manure from animal feeding operations located in the North and Upper North Bosque River (Segments 1226 and 1255) and Leon River (Segments 1221 and 1223) Watersheds to certified compost facilities instead of application to land off-site of the facility and in the impacted watersheds.

(b) Reimbursement Payment. In watershed areas specified by the State Board, expenses for hauling manure, consistent with all provisions in this section (§523.7 Incentives for Composting Animal Manure), to compost facilities certified by the Texas Commission on Environmental Quality (TCEQ) and approved by the State Board, will be paid by the State Board according to reimbursement rates established under subsection (c) of this section, Reimbursement Rates.

(c) Reimbursement Rates. Reimbursement rates shall be established by the State Board on a ton per mile rate based on the conditions in the watersheds.

(d) Reimbursement Procedures. Reimbursement for specified hauling expenses will be paid directly to the hauler, upon submittal of expenses on reimbursement forms, approved by the State Board, to the State Board designated agent in the watershed, and upon necessary processing by the State Board and submission to the State Comptroller for payment.

(e) Reimbursement Forms. Reimbursement forms will be issued by the State Board and will be available, upon request from the designated agent of the State Board, in the watershed.

(f) Required Signatures. Reimbursement forms will provide for and require the following signatures:

(1) The owner/operator or the designated agent of the Animal Feeding Operation (AFO) from which the load originates, certifying the location, date and weight of the load leaving the AFO.

(2) The owner/operator or the designated agent of the certified compost facility where the load is delivered, certifying delivery, location, date and weight received.

(3) The hauler, certifying delivery date, weight and mileage.

(g) Rejected Goods. The State Board will not reimburse hauling expenses for loads not accepted by a certified compost facility. It is the responsibility of the AFO owner/operator or the designated agent to arrange for acceptance by the compost facility prior to initiating delivery.

(h) Assistance. The owner/operator or the designated agent of an AFO may obtain assistance in locating haulers and certified compost facilities by contacting the designated agent of the State Board in the watershed.

(i) Eligible Haulers. In order to be eligible for reimbursement payments, haulers must participate in a workshop conducted by the State Board designated agent covering proper procedures for reimbursement payments. Reimbursement will not be paid for loads invoiced not consistent with State Board approved procedures.

(j) Designated Agent of the State Board. The State Board designated agent will be responsible for the day-to-day activities of the project in the watershed. The State Board designated agent may employ or contract with a person or entity to carry out this responsibility. The location and telephone number of the designated agent will be available from the State Board office in Temple.

Effective February 13, 2006

§523.8 Comprehensive Nutrient Management Planning in the North Bosque River Watershed

(a) Policy Statement. In accordance with §519.1 of this title (relating to Technical Assistance Program) and the policy of the State Soil and Water Conservation Board to develop and implement a program to provide technical assistance for the development and implementation of soil and water conservation plans and soil and water conservation measures, §523.8 of this title (related to comprehensive nutrient management planning in the North Bosque River watershed) is adopted.

(b) Definitions. The following words and terms, when used in §523.8, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Animal feeding operation - A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season.

(2) Comprehensive nutrient management plan, herein referred to as CNMP, - a resource management plan containing a grouping of conservation practices and management activities which, when combined into a conservation system, will help ensure that both agricultural production goals and natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality are achieved. A CNMP incorporates practices to utilize animal manure and organic by-products as a beneficial resource. To be certified, a CNMP must cover all lands that constitute the conservation management unit.

(3) Conservation management unit - for the purposes of this section and regarding comprehensive nutrient management planning, a conservation management unit includes the production area and land application activities which are onsite or are contiguous to the site.

(4) Environmental stewardship programs for owners and/or operators of animal feeding operations - any program, administered by a governmental or non-governmental entity, which provides the owner or operator of an animal feeding operation with a mechanism for improving the overall efficiency of the operation, operating in accordance with all applicable state or federal laws pertaining to water quality, and furthers the effective conservation of the state's soil and water resources.

(5) North Bosque River watershed - the geographic area consisting of all the drainage area for the two designated water quality segments as defined in the two adopted Total Maximum Daily Loads for Phosphorus in the North Bosque River. The two designated water quality segments are segment 1226, the North Bosque River, extending from a point 100 meters upstream of FM Road 185 in McLennan County to a point immediately upstream of the confluence of Indian Creek in Erath County, and segment 1255, the Upper North Bosque River, extending from a point immediately upstream of the confluence of Indian Creek in Erath County to the confluence of the North Fork and South Fork of the North Bosque River in Erath County.

(6) Natural Resources Conservation Service, herein referred to as NRCS, - An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).

(7) NRCS - Field Office Technical Guide, herein referred to as NRCS - FOTG, - The official NRCS guidelines, criteria, and standards for planning and applying conservation treatments.

(8) NRCS Technical Service Provider Process - The process by which a technical service provider obtains certification by NRCS to provide technical services including conservation planning, and/or the design, layout, and installation of approved conservation practices.

(9) Resource management plan - a site specific blueprint for implementation of soil and water conservation land improvement measures. It includes a record of the eligible person's decisions made during planning and the resource information needed for implementation and maintenance of the plan that has been reviewed and approved by the SWCD.

(10) Resource management system - a combination of conservation practices and resource management activities for the treatment of all identified resource concerns for soil, water, air, plants, animals, and humans that meets or exceeds the quality criteria in the Natural Resource Conservation Service's Field Office Technical Guide for resource sustainability.

(11) Soil and water conservation district, herein referred to as SWCD, - A government subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code of Texas.

(12) State Board - The State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

(13) Technical service provider - an individual, entity, or public agency certified by the NRCS State Conservationist and placed on an approved list to provide technical services.

(14) Texas Commission on Environmental Quality - the state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(c) Applicability. Any owner or operator of an animal feeding operation that meets the following criteria may submit a CNMP to the State Board for certification in accordance with §523.8(f) of this title. Owners or operators of an animal feeding operation within the North Bosque River watershed, or owners or operators of an animal feeding operation that has enrolled in any agricultural environmental stewardship program whose administrators have a current memorandum of agreement with the State Board regarding a State Board certification of a CNMP as programmatic requirement.

(d) Process for obtaining a CNMP. It is the intent of the State Board that all CNMPs be developed by technical service providers certified by NRCS to develop CNMPs or component parts of CNMPs. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval. Owners and operators of animal feeding operations who meet the applicability criteria set forth in §523.8(c) and intend to submit a completely developed CNMP to the State Board for certification shall:

(1) be a SWCD cooperator.

(2) declare to the SWCD their intent to submit a CNMP for State Board certification.

(3) request to view a list of certified technical service providers who have been certified by the NRCS to develop CNMPs from their local SWCD and/or NRCS Field Office. Owners and operators whose CNMP is developed by persons not certified to develop CNMPs through NRCS' Technical Service Provider process must submit their CNMP to the local NRCS Field Office for approval.

(4) inform the SWCD that they intend to apply for cost-share assistance, if applicable. All cost-share assistance toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource

management plan, shall be in accordance with §523.6 of this title (relating to Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures).

(e) Cost-share. In accordance with §523.6 of this title, the State Board may allocate funds to a SWCD for cost-share assistance to landowners toward the implementation of land improvement measures consistent with the purpose of controlling erosion, conserving water, and/or protecting water quality. All cost-share assistance toward the development of a resource management plan and toward the implementation of land treatment measures contained within the resource management plan, shall be in accordance with §523.6 of this title.

(f) Certification.

(1) When the following conditions are met the State Board may certify that a CNMP satisfies the State Board's technical criteria and programmatic guidance for comprehensive nutrient management planning with the State's requirements for water quality:

(A) The owner or operator of the animal feeding operation concurs and understands that the conservation practices and implementation schedules contained within the CNMP, when applied and maintained to form a resource management system will meet the State's requirements for water quality; the owner or operator of the animal feeding operation agrees to notify the local SWCD in the event of deviation from the implementation schedule; and the owner or operator of the animal feeding operation agrees that any substitution or changes to the conservation practices or schedules must be in accordance with the NRCS - FOTG, the State Board's Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning, and the rules and regulations of the State.

(B) The CNMP is in accordance with the Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning adopted by the State Board and contains an implementation schedule pursuant to §523.8(i) of this title.

(C) The owner or operator of the animal feeding operation meets the requirements of §523.8(c) of this title (related to applicability).

(D) The SWCD has approved the CNMP as including the entire conservation management unit.

(E) The CNMP was developed by a technical service provider certified by the NRCS to develop CNMPs or the NRCS Field Office has approved the CNMP as meeting the requirements of the NRCS - FOTG for a Resource Management System.

(2) Withdrawal of certification. The State Board may withdraw certification of any CNMP which, in consultation with the SWCD, has been demonstrated to be deficient in one or more of the conditions established under §523.8(f)(1) or if the holder of the CNMP fails to implement the CNMP in accordance with §523.8(i).

(g) Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning. The technical criteria and specific practice standards considered as components of comprehensive nutrient management planning are based on the criteria in the NRCS - FOTG; however, modification of those practice standards to ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program will be made by the State Board as necessary. The State Board will adopt and maintain Technical Criteria and Programmatic Guidance for Comprehensive Nutrient Management Planning to ensure consistency with state water quality standards, state water quality laws regarding animal feeding operations, and the state agricultural and silvicultural nonpoint source management program.

(h) Environmental Stewardship Programs for Owners and/or Operators of Animal Feeding Operations. The State Board may enter into agreements with entities administering programs who request that participants of such programs receive certification in accordance with §523.8(f) of this title as a programmatic requirement if the State Board determines that the program is consistent with the state agricultural and silvicultural nonpoint source management program and all other State Board policies.

(i) Implementation schedule. A CNMP must contain an implementation schedule.

(1) The implementation schedule will, as far as is practicable, balance the state's need for protecting water quality with the need of agricultural producers to have sufficient time to implement practices in an economically feasible manner.

(2) Highest priority will be given to the implementation of the most cost effective and most needed pollution abatement practices.

(3) The State Board in consultation with the local SWCDs will conduct an annual status review of plan implementation.

(4) The State Board in consultation with the local SWCDs may withdraw certification of a CNMP that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and be given a reasonable period of time to implement the CNMP according to the schedule or a modified schedule approved by the SWCD.

(5) The holder of a certified CNMP shall notify the local SWCD in the event he or she deviates from the implementation schedule.

(j) Applicability of state water quality standards. To the extent allowed by available technology, CNMP development, approval and certification will be based on state water quality standards as established by the Texas Commission on Environmental Quality.