

United States Department of Agriculture



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April 16, 2009

NEW MEXICO BULLETIN NO. 440-9-2

SUBJECT: PGM – CONSERVATION PROGRAM CONTRACT - FY-2009 WAIVER
AUTHORITY

To: All Employees

Purpose. FY-2009 Waiver Authority for Starting Practices before Conservation Program Contract Approval and Commencing a practice within the first 12 months.

Expiration Date. September 30, 2009

Waiver for Starting Practice before CPC

Current policy in 440-CPM, Part 512.23(c), allows State Conservationists to grant waivers to program applicants to allow implementation of conservation practices prior to approval and obligation of a Conservation Program Contract (CPC). The waiver can be granted for special cases and for meritorious reasons, if the practice has not been started when the waiver is applied for and if applicant meets all eligibility requirements described in Part 512.24.

Because the NRCS contracting software is not yet available the timely approval of these waivers is being impacted. As per policy, applicants must be determined eligible prior to granting a waiver to start a practice before a CPC is approved.

Through memo distributed on April 3, 2009 signed by the Chief Dave White, temporary relief is being provided from the requirement that the producer be “eligible” at the time of application, as stated in CPM-440, Part 512.23(c). This temporary relief is only provided until the Web Service is fully functional. Once the Web Service becomes fully functional the policy outlined in CPM-440, Part 512.23(c) will be followed.

In New Mexico the authority to grant the waiver to start a practice is being delegated to the Assistant Conservationist for Programs or designee (Michael Neubeiser or Seth Fiedler).

Applicant will be notified in writing by the State Office that there is no guarantee the application will result in a contract and no expedited payment process if it does.

The request by the applicant must be dated, signed by all parties expected to sign the contract if approved (if practicable) along with an explanation justifying the waiver. The request must be supported in writing by the District Conservationist concurring with the justification offered by the

applicant. In addition, the District Conservationist must provide indication that the application has the potential to be funded taking into consideration the number of applications and funding availability. District Conservationist will route request through the Area Conservationist for concurrence. Area Conservationist will forward request with concurrence to the ASTC for Programs.

Commencing a practice within the first 12 months

The authority to grant a waiver to the requirement stipulating a practice must start within the first 12 months upon contract obligation by Protracts approving official is delegated to the Assistant State Conservationists for Programs or designee (Michael Neubeiser or Seth Fiedler).

Policy in CPM-440, Part 512.45(c) is as follows:

C. Program Practice Requirements

(1) Failure to start an AMA, EQIP, or WHIP financially assisted practice within the first 12 months of the contract will constitute non-compliance with the provisions of the contract. The State Conservationist may waive this requirement with justification at the request of a participant.

Participant must agree to the revised practice application schedule on the Form NRCS-LTP-153 which must include notification of consequences of failure to implement as rescheduled. The District Conservationist will prepare the NRCS-LTP-153 and route through the Area Conservationist for concurrence along with the written waiver request from participant. Area Conservationist will forward with concurrence to ASTC for Programs.

In New Mexico “starting” a practice means “there must be physical evidence that work has been initiated.” Physical evidence is earth movement, trenching, site preparatory, drilling equipment on site, plowing, and specific machinery/equipment on site etcetera. Physical evidence must be a combination of stockpiling materials on site and indication of a genuine effort in commencing the practice.

For example:

A fence must indicate that some fence posts are in the ground or clearing has occurred for placement of posts in the ground along with evidence of materials on site or at the farm/ranch.

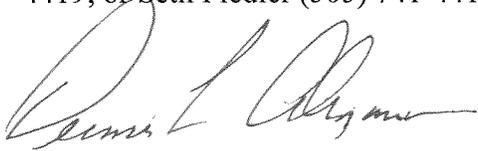
A pipeline must show evidence that the trenching has commenced along with evidence of materials on site or at the farm/ranch.

A water control structure must indicate site preparatory work has commenced along with evidence of materials on site or at the farm/ranch.

NRCS personnel or Farm Bill employees must visually concur that materials are on site or at the farm/ranch and physical work has commenced.

Simply buying materials, hiring a contractor, or securing a loan is not adequate by themselves in determining commencement of a practice. Once visual confirmation is made, the NRCS field office employee is responsible for documenting the observed activity in the case file prior to forwarding a participant’s written request for a waiver along with the NRCS-LTP-153.

For additional information please contact Norman Vigil, (505) 761-4445; Mike Neubeiser, (505) 761-4419; or Seth Fiedler (505) 741-4416.

A handwritten signature in black ink, appearing to read "Dennis L. Alexander". The signature is fluid and cursive, with a large initial "D" and "A".

DENNIS L. ALEXANDER
State Conservationist