

COMMONWEALTH OF VIRGINIA

Department of Environmental Quality

Subject: Agricultural Best Management Practice (Ag BMP) Program Guidelines
To: Clean Water Financing and Assistance Program Staff
From: Valerie Thomson, Director of Administration *Valerie Thomson* electronic signature
Date: December 16, 2020

Summary:

In order to reduce agriculture non-point source pollution of Virginia's waters, the Virginia General Assembly in its 1999 session amended Chapter 22 of the *Code of Virginia* by adding § 62.1-229.1 which expanded the activities of the Virginia Water Facilities Revolving Fund to the Commonwealth's agricultural producers for implementation of specific agricultural best management practices. This Code section was amended in 2019 to add a grant funding option, to expand eligible applicants, and to expand eligible practices to include riparian buffers and renovation, improvement or equipping of facilities. The purpose of this update to the guidelines is to implement several changes identified by staff as necessary to improve implementation of the program.

Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>);
- The Department's website at <https://www.deq.virginia.gov/water/clean-water-financing>.

Contact Information:

Please contact Karen Doran at (804) 698-4133 or karen.doran@deq.virginia.gov with any questions regarding the application of this guidance.

Certification:

As required by Subsection B of [§ 2.2-4002.1](#) of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in [§ 2.2-4101](#) of the Code of Virginia.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

VIRGINIA'S AGRICULTURAL BMP LOAN PROGRAM GUIDELINES

STATE WATER CONTROL BOARD

Approved December 7, 1999

Updated May 9, 2012

Amended June 27, 2019

Amended December 9, 2020

VIRGINIA'S AGRICULTURAL BMP LOAN PROGRAM AND ENABLING LEGISLATION

In order to reduce agriculture non-point source pollution of Virginia's waters, the Virginia General Assembly in its 1999 session amended Chapter 22 of the *Code of Virginia* by adding § 62.1-229.1 which expanded the activities of the Virginia Water Facilities Revolving Fund (the Fund) to the Commonwealth's agricultural producers (Producers) for implementation of specific agricultural best management practices (Ag BMPs). This Code section was amended in 2019 to add a grant funding option, to expand eligible applicants, and to expand eligible practices to include riparian buffers and renovation, improvement or equipping of facilities.

§ 62.1-229.1. Loans for agricultural best management practices

Loans and grants may be made from the Fund, in the Board's discretion, to (i) any person, for the construction, renovation, improvement or equipping of facilities or structures to implement agricultural best management practices to prevent pollution of state waters; (ii) a local government that has developed a low-interest loan program to provide loans or other incentives to facilitate the construction, renovation, improvement or equipping of such facilities or structures; or (iii) a financial institution working with a local government to establish a program pursuant to clause (ii). The Board shall develop guidelines for the administration of such loans and grants and shall determine the terms and conditions of any loan or grant from the Fund.

For purposes of this section, facilities or structures to implement agricultural best management practices may include riparian buffers planted in trees and maintained in accordance with the terms and conditions of the loan or grant.

The purpose of this Ag BMP assistance initiative is to provide a source of low cost financing to encourage the use of specific best management practices that reduce or eliminate the impact of Agricultural Non-point Source (NPS) pollution on Virginia waters. The goal of the program is to improve water quality in the Commonwealth.

FUNDING AVAILABILITY

The Virginia Clean Water Revolving Loan Fund (VCWRLF) program was established in 1988 to create a perpetual source of low and no interest financing which would be available to Virginia municipalities for improving publicly owned wastewater treatment works and collection systems. On behalf of the State Water Control Board (the Board), DEQ developed and continues to administer the VCWRLF program and manage the Fund in conjunction with the Virginia Resources Authority (VRA). Virginia's Ag BMP program is one of a number of program components eligible to utilize the Fund to provide a continuing source of low cost financing to Virginia's eligible applicants to assist in their efforts to reduce agricultural non-point source pollution.

The Ag BMP program is not dependent on legislative appropriations for its fund availability. During the

early stages of the Ag BMP loan program, the Board set aside a total of \$15 million from the Fund to capitalize the program. All repayments of principal and interest from previous Ag BMP loans are returned to the Fund and used to provide additional loans to other eligible applicants. In addition to the revenue available from repayments, DEQ can request that the Board consider making additional funding set-asides from the Fund as necessary to meet Virginia’s agricultural non-point source pollution reduction needs. In December 2019, the Board approved an additional set aside of \$10 million from the Fund.

WHO IS ELIGIBLE TO APPLY

Any Producer wishing to implement eligible best management practices to reduce the amount of polluted agricultural runoff entering Virginia waters will be considered by DEQ for Ag BMP program assistance. Soil and Water Conservation Districts are also eligible to apply. Local governments and financial institutions working with a local government that have developed a low interest loan program are eligible for funding from the program. Producers will be considered for loan assistance regardless of whether they choose to participate in any other state and/or federal agricultural assistance program.

ACRONYMS AND DEFINITIONS

Definitions of terms and acronyms used in this guidance document as they apply to the Virginia Agricultural BMP Loan Program are:

Ag BMP	Agricultural Best Management Practice
Board or SWCB	State Water Control Board
DEQ.....	Department of Environmental Quality
DCR.....	Department of Conservation and Recreation
“Fund”	Virginia Water Facilities Revolving Fund
"in-kind services"	Labor and/or materials provided by the applicant or their farm employees and/or rental fees for farm equipment owned by the applicant
Incurred cost.....	Eligible expenses for which the loan recipient has been invoiced or amounts which are due and stipulated in a contract for labor, material or professional services
NPS	Non-Point Source – Pollution from runoff of agricultural chemicals, animal waste, storm water, fertilizer and/or erosion
NRCS	United States Department of Agriculture, Natural Resources Conservation Service
Producer	Landowner, agent, or operator of record, which may be an individual, corporation, limited liability company, trust, or other legal entity, engaged in agricultural production for market and having control of the property on which the practice will be located
SWCD	Soil and Water Conservation District
VCWRLF	Virginia Clean Water Revolving Loan Fund
VRA.....	Virginia Resources Authority

LOAN AMOUNTS

Minimum Loan Amount

The minimum allowable loan amount is \$10,000. For projects that have received cost share funds prior to loan closing, loans may be less than \$10,000 provided total project cost, which includes the cost share amount, is at least \$10,000.

Maximum Loan Amount

The maximum allowable loan amount is \$600,000. The maximum amount of active program loan utilization is \$1,000,000. Active program loan utilization is the current loan amount outstanding in the

program and the amount of any new loan application(s).

ELIGIBLE LOAN AMOUNT

Eligible applicants may request loan assistance from the Virginia Ag BMP program to finance implementation expenses under a cost-share grant agreement up to 100% of loan eligible expenses for approved Ag BMPs. In cases where cost-share funds will be provided at completion of one or more practices, these funds must immediately be applied to retirement of the loan obligation to avoid any duplication of funding. Funding is limited to the expenses relating to implementation of the eligible practice(s) and the loan amount cannot be greater than the total estimated cost of implementing the practice(s).

LOAN REPAYMENT PERIOD

The total Ag BMP loan amount, useful life of the structure or facility, and payment capacity are considered in setting the loan repayment period. Based on these factors, repayment periods may range from 1 to 10 years but will not exceed the expected useful life of the practice funded. DEQ may offer extended repayment periods in situations that result in a significant water quality benefit.

ELIGIBLE PRACTICES FOR FINANCING BY PROGRAM

Virginia's legislation specifically limits Ag BMP assistance to facilities and structures that are necessary for "any person" to implement agricultural best management practices. The list of best management practices pertains to construction, renovation, improvement, or equipping of facilities or structures as prescribed by statute and is specific to practices for water quality protection. The practices that are eligible for loan assistance through the Virginia Ag BMP program are listed in Table 1.

INTEREST RATE

Loan assistance will be made available at 0% per annum.

PRINCIPAL FORGIVENESS

DEQ may authorize up to 100% of loan assistance in the form of principal forgiveness for 1) projects providing a high water quality benefit and 2) applicants demonstrating financial need. The amount of principal forgiveness, if any, authorized for any project will be based on the availability of principal forgiveness funding in the program, the total amount of loan funds needed for the project, and the amount of grant funds made available to the project from other funding sources. Loan applicants should consult IRS Publication 225 – Farmer's Tax Guide and a tax professional about potential tax liability associated with accepting principal forgiveness.

ELIGIBLE EXPENSES

Authorized assistance amounts will be restricted to costs associated with services, labor, and materials necessary to complete or implement the approved BMP(s). Disbursement of funds will be made as the cost of implementation or construction is incurred. The following expenses may also be included when determining the allowable amount of Ag BMP assistance and can be reimbursed from loan proceeds after the cost is incurred.

- costs associated with professional services for any planning, design, or construction services needed to implement the approved BMP
- contractor(s) invoices for payments due or payments which are due to contractor(s) as specified

in a binding contract relating to the approved BMPs

- invoiced cost of materials stored on site / incorporated in the work
- invoiced cost for labor used to install the practice
- other related costs incurred as necessary and as approved by DEQ

INELIGIBLE EXPENSES

The following expenses cannot be included when determining the allowable amount of an Ag BMP loan or reimbursed from loan proceeds:

- "in-kind services"
- costs related to farm production equipment
- costs which have been paid by federal, state, local, or other grant sources cannot be included in the assistance amount or reimbursed; in the event that grant funds are received for work previously paid for with loan funds, the grant funds must be applied to reduction of the loan principal
- finance charges

AG BMP PROCESS OVERVIEW

APPLICATION – The application (Appendix A) is a short questionnaire which provides the name of the applicant, location of the farm, specific BMP(s) proposed for assistance, estimated total cost of the practice(s), and the applicant’s estimate of the amount of assistance that will be required.

Applications do not need to be submitted by any specific date and there is no scheduled solicitation of applications for Ag BMP assistance. After an application is received by DEQ, a member of the Clean Water Financing and Assistance Program (CWFAP) staff will contact the applicant and arrange a meeting at the project location. This “*Initial Meeting*” provides an opportunity for the CWFAP staff to gain a better understanding of what the project will involve, determine if any part of the proposed practice(s) is not eligible, explain what happens next in the loan review and approval process, and answer any questions the applicant may have. (*See Ranking of Applications section below.*)

At any time during the year, an applicant may take the first step in applying for Ag BMP program assistance from DEQ by completing the application, which can be found online at <https://www.deq.virginia.gov/Programs/Water/CleanWaterFinancingAssistance.aspx>, and sending it to DEQ at CWFAP@deq.virginia.gov or mailing a hard copy to the address below:

**Clean Water Financing and Assistance Program
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218**

RANKING OF APPLICATIONS – DEQ staff will prioritize applications for assistance on a monthly basis. Applications for practices which are expected to provide the greatest water quality benefit will be given the highest funding priority. Applications considered to impact segments of Impaired, Nutrient Enriched, or Exceptional State waters and those within watersheds with an approved TMDL Implementation Plan will receive a HIGH funding priority. Applications affecting an area with an

impoundment, a natural trout stream, a designated scenic river, or that demonstrate another recognizable water quality benefit will be given a MEDIUM priority rating. All applications which do not meet the criteria for a HIGH or MEDIUM prioritization will receive a LOW ranking. This prioritization process is conducted once per month, generally during the last week of the month. Applications received by the 20th of each month will be considered in that month's applicant group.

Contingent on availability of funds, all projects that receive a HIGH or MEDIUM priority ranking and are ready to proceed to construction or the implementation phase within a six-month timeframe will be recommended for a conditional funding authorization. The conditions of that authorization are that DEQ receives verification that the applicant has an acceptable conservation plan / nutrient management plan and that DEQ and VRA approve the loan application after loan underwriting is complete.

HIGH and MEDIUM priority projects that cannot proceed to construction or the implementation phase within a six-month timeframe will be deferred and may be reconsidered for funding at a later date. The applicant will need to resubmit an application when the project is within six months of construction or implementation.

With no recognizable water quality benefit, all proposed projects that received a LOW priority ranking will be denied for funding.

NUTRIENT MANAGEMENT PLANS – ANIMAL WASTE PRACTICE(S)

Prior to approving loan funding for projects that include animal waste practices, the loan program requires that the applicant obtain a current Nutrient Management Plan (NMP) which has been prepared by a DCR certified planner. If the applicant chooses to have a DCR certified private planner develop the Nutrient Management Plan, the preparation fee can be included in the loan amount. An independent cost estimate for the preparation fee may be required.

CONSERVATION PLANS – ALL PRACTICE(S)

Prior to funding approval, the loan program requires that the applicant have a conservation plan that has been approved by the local Soil & Water Conservation District (SWCD) and contains the proposed practice(s) and an implementation schedule for the specific site or field. Several types of plans qualify as a conservation plan for non-animal waste practices provided the plan includes a schedule and can be used to fulfill the conservation planning requirement:

- Conservation Plan (NRCS or DCR standards)
- Nutrient Management Plan (DCR standards)
- Ag Stewardship Plan (VDACS standards)
- Chesapeake Bay Plan (CBLAD standards) – A Chesapeake Bay Plan is required for all practices located within areas included under the Chesapeake Bay Preservation Act.

If the proposed practice(s) is not included in an existing plan, appropriate government agencies such as the local SWCD, NRCS or DCR can prepare one at no charge to the applicant. If the applicant chooses to have a private planner develop the plan, the fee can be included in the loan amount. The plan must identify the practice and an installation schedule that applies only to the specific field or location of the proposed BMP. While "Whole Farm" plans are not required to fulfill conservation plan requirements, the development of plans which address additional water quality issues is encouraged.

CONDITIONAL AUTHORIZATION AND CREDIT REVIEW – Shortly after the prioritization process is

completed, each applicant who submitted a request for assistance for a practice(s) that resulted in a HIGH or MEDIUM priority and is ready to proceed will receive a Conditional Loan Authorization letter from DEQ. The letter will state the amount of funds that have been authorized, contingent on two conditions being fulfilled prior to DEQ's final approval of the loan. The first condition is that the applicant will provide DEQ with evidence that they have a conservation plan or nutrient management plan in place that meets the loan program requirement. The second condition is that the applicant is approved by DEQ and VRA following credit review and underwriting. Included with the Conditional Loan Authorization letter will be two financial forms. One is the *Virginia Agricultural BMP Loan Program Application for Loan* and the other is the *Financial Information* worksheet. It is very important that applicants who are selected for funding enter the credit review process in a timely manner. Within 30 days after receiving a Conditional Loan Authorization Letter, the applicant should complete the two financial forms and submit them to VRA. Once VRA has received the completed financial information forms and any additional financial information that was requested from the applicant, VRA or Farm Credit will conduct an underwriting analysis. Based on the result of that analysis, VRA or Farm Credit will provide DEQ with a recommendation for either approval or denial of the loan based on approved underwriting standards. Recommendations will also specify any collateral that VRA or Farm Credit has recommended as appropriate security for the loan. DEQ will then approve or deny the request.

DESIGN – Many practices that will be financed with Ag BMP program assistance will require development of design documents. This is especially the case for those projects involving construction of animal waste control facilities. The design documents usually consist of a set of specifications and construction drawings, which demonstrate that the practice or practices meet, at least, the minimum standards established by NRCS, DCR or DEQ. If the applicant elects to hire a private consultant to prepare the design documents, the fee for design of the BMP will be eligible for reimbursement from loan proceeds. Upon completion of the design, the applicant must provide DEQ with a copy of the design document(s) and the most recent estimate of the cost of implementing the practice(s).

LOAN APPROVAL – Once a loan has been approved by DEQ and VRA and the appropriate conservation plan or nutrient management plan and design document(s) have been received, DEQ will finalize the terms and conditions of the loan and provide the applicant and VRA with authorization to execute the loan agreement. The authorization will include the amount and term of the loan as well as a list of any special conditions that are applicable.

LOAN AGREEMENT – After receipt of authorization from DEQ, VRA will, on behalf of the Commonwealth, execute a loan agreement with the applicant. The loan agreement will specify the loan amount, interest rate, repayment period, loan security arrangements and any special conditions which were stipulated by DEQ. The loan agreement will also require the loan recipient to operate and maintain the practice which is constructed with the loan funds for the life of the loan and utilize the practice for its intended use as an agricultural BMP.

CONSTRUCTION AND DISBURSEMENT OF LOAN FUNDS – Loan funds are disbursed on a reimbursement basis, after costs have been incurred. VRA may disburse loan funds to the applicant only upon written authorization from DEQ. Therefore, when loan recipients have incurred expenses which are eligible for payment from loan funds, it is necessary for them to submit a *Request for Disbursement of Ag BMP Loan Funds* form to DEQ. Copies of loan eligible invoices or contracts

must accompany the disbursement request form. Upon receipt of the applicant's request for disbursement, DEQ will review the request and may contact the applicant to arrange a visit to the project site. Once DEQ has completed their review of the request and supporting documentation (including any additional information requested of the recipient) and conducted the site visit (as deemed appropriate by DEQ) DEQ will then authorize VRA to disburse the eligible amount of loan funds to the applicant. Usually the disbursement is authorized within 3 to 5 working days from the date DEQ receives a complete request for disbursement.

CONSTRUCTION COMPLETION AND FINAL DISBURSEMENT – Once construction activities are complete, the applicant will request a final inspection of the practice(s) which were financed with Ag BMP loan proceeds. After receiving the request for a final inspection, a DEQ representative will conduct an onsite review of the practice(s) to determine that the Ag BMP project is complete and meets the minimum standards set forth in the plans and specifications. DEQ will review the final disbursement request and authorize the final disbursement after a completion determination is made.

LOAN AND FUND MAINTENANCE – VRA will collect repayments on Ag BMP loans for the term specified in the financing agreement.

LOAN DEFAULT – In the event of a default, DEQ and VRA will take all appropriate measures, including legal actions, which are necessary to collect amounts due. At DEQ and VRA's sole discretion, loans in default may be referred to the Virginia Office of the Attorney General and the Borrower will be responsible for any additional fees and collection costs.