

Approval of Continued Actions Related to the Implementation of the VACS Program at the Robert E. Lee Soil and Water Conservation District

§ 10.1-505. Duties of Board.

In addition to other duties and powers conferred upon the Board, it shall have the following duties and powers:

3. To oversee the programs of the districts.

§ 10.1-546.1. Delivery of Agricultural Best Management Practices Cost-Share Program.

Districts shall locally deliver the Virginia Agricultural Best Management Practices Cost-Share Program described under § 10.1-2128.1, under the direction of the Board, as a means of promoting voluntary adoption of conservation management practices by farmers and land managers in support of the Department's nonpoint source pollution management program.

FY2024 Cost-share and Technical Assistance Grant Agreement

(10) COST-SHARE ALLOCATION AND DISTRIBUTION:

Cost-share shall be allocated to Districts in accordance with the *Policy and Procedures on Soil and Water Conservation District Cost-Share and Technical Assistance Funding Allocations (Fiscal Year 2024)* and shall be disbursed in accordance with the provisions of this Agreement and in the amounts set out or referenced in Attachment B. Department personnel will confer with District staff at least quarterly to determine their projected needs for cost-share payments for projected completed BMPs. Department personnel will generate a disbursement letter based upon their District's projected ninety-day needs and Agricultural BMP Tracking program data showing obligations. Cost-share payments to applicants shall be conducted in accordance with the Program Year 2024 Virginia Agricultural Cost Share (VACS) BMP Manual. Any application must meet appropriate technical agency standards and specifications of that practice before cost-share payment is made. Payment is issued after the participant and technical representative have certified practice installation in their Virginia BMP Incentives Contract. Information regarding cost-share payments made by Districts shall be entered into the BMP cost-share tracking database within one month of payments being rendered.

Motion approved by the Virginia Soil and Water Conservation Board on December 6, 2023

The Virginia Soil and Water Conservation Board (Board) directs the following actions to be taken in response to the severe deficiencies found in the administration of the Virginia Agricultural Best Management Cost-Share (VACS) Program at Robert E. Lee Soil and Water Conservation District (District):

1. The District is prohibited from issuing payment for any structural practices without the Department of Conservation and Recreation's written approval. The District's Conservation District Coordinator will coordinate with the Department's Agricultural BMP Engineering Services Program and the Agricultural Incentives Program Manager to provide notice of practices that are eligible for payment by the District Board on a monthly basis.
2. The Department will conduct a review of all structural practices that have been issued payment in FY2024, are in carryover status (approximately 20 practices), or have been approved by the District Board in FY2024 to determine if all the applicable VACS Program guidelines have been adhered to including requirements related to the design and approval of engineering plans,

completion of as-built designs, and the final inspection of the practice by an authorized individual prior to payment being issued to the producer.

3. Any practices not yet under construction that are determined to have engineering plans designed and approved in accordance with the VACS Program guidelines will be eligible to proceed to construction.
4. For those practices not yet under construction that are determined to have either (i) no engineering plans or (ii) engineering plans that have not been designed and approved in accordance with the VACS Program guidelines, the Department's Agricultural BMP Engineering Services Program will work closely with District staff to ensure proper designs are developed, reviewed, and approved in accordance with the Program guidelines prior to initiation of construction.
5. Any practices that have been paid but failed to meet the VACS Program guidelines shall solely be the financial responsibility of the District. Additionally, the District bears the sole liability for any failure or issue(s) that arises from these practices. The District shall reimburse the Department for any payments made for practices that were not implemented in accordance with the VACS Program guidelines.
6. For those practices that are currently under construction and do not have engineering plans designed and approved in accordance with the VACS Program guidelines, the producer will be encouraged to halt construction until the practice's engineering design is approved by the Department. These practices will receive priority for review by the Department's Agricultural BMP Engineering Services Program. Should the producer decide to continue with practice construction, they do so at their own risk. Any practices that continue with construction will solely be the financial and legal responsibility of the District and will be ineligible for payment from any cost-share allocations.
7. Department Manager(s) will attend a District Board meeting at their earliest opportunity to discuss the concerns of the Board and the Department regarding the administration of the VACS Program and any other relevant concerns.
8. At the March 2024 Board meeting, the Department will provide an update on the status of VACS Program administration at the District as well as any additional actions that may be warranted in response to the deficiencies found.

Recommended Motion:

1. The District is prohibited from issuing payment for any agronomic practices without the Department of Conservation and Recreation's concurrence. The District's Conservation District Coordinator will coordinate with the District employees, and the Agricultural Incentives Program Manager to ensure all required contracts and supporting documentation are in order; minimum best management practice standards are met; and payments are appropriately processed. The Department's concurrence may be documented by written communication from the District's Conservation District Coordinator.
2. No new applications for practices will be approved for FY2024 without the Department's concurrence. The Department's concurrence may be documented by written communication from the District's Conservation District Coordinator.

3. For Contracts 10-22-0029, 10-23-0011, and 10-23-0012, the District remains solely financially liable and will remain liable for any failures or issues that arise with these practices. The District shall provide \$260,180.09 to the Department for reimbursement to the VACS Program and \$33,823.41 for the associated technical assistance. These repayments must utilize the District's administration and operations funding, reserve funds, or other local funding sources. Neither VACS Program cost-share nor current year technical assistance funding may be utilized.
4. For Contracts 10-22-001, 10-22-0031, 10-23-0010, 10-23-0054, 10-23-0056, 10-24-00012, and 10-24-0003, modifications that were designed and approved by Department's Agricultural BMP Engineering Services Program are eligible to be paid from the District's cost-share allocation, if the as-built inspections, invoices, receipts, and other documentation verify the modifications are constructed or installed in accordance with the VACS Program. All other costs associated with these contracts, including pledged buffer payments, are the financial responsibility of the District and must be paid utilizing the District's administration and operations funding, reserve funds, or other local funding sources. The District bears the sole liability for any failure or issue(s) that arises from these practices in the future.
5. The District is directed to establish an interest-bearing savings account or other appropriate financial instrument to ensure the District has the financial resources necessary to compensate producers for any failures or issues that arise from the ten contracts in items 3 and 4 above. These funds must be easily accessible to address any practice failures or other issues that arise. The District shall hold an amount equal to 15% of the cumulative total cost (including payments made by both the District and the VACS Program) of all practices in question and shall be held for a period of 15 years for this exclusive purpose. This account must be documented on the District's Attachment E submittals. After the 15-year period expires, the interest earned on these funds must be utilized to provide funding for VACS Program eligible best management practices.
6. For the remaining structural practices not yet under construction that have either (i) no engineering plans or (ii) engineering plans that have not been designed and approved in accordance with the VACS Program guidelines, the Department's Agricultural BMP Engineering Services staff, while balancing their workload to meet the needs of other Districts, will work closely with District staff to ensure proper designs are developed, reviewed, and approved in accordance with the Program guidelines prior to initiation of construction. The District may seek assistance from qualified staff from other Districts to help develop designs for these projects in accordance with the VACS Program guidelines.
7. The District must actively begin recruiting for at least one full-time conservation technician. The District should review its administration and operations funding levels, potential VACS Program funding levels, and base technical assistance levels to assist with determining appropriate staffing levels. The District must provide updates to the Conservation District Coordinator at the

monthly District Board meetings about the positions that are being hired and the anticipated timing of those hirings.

8. All District Directors are required to complete Phase I of Director Orientation. This training, including the final quiz, must be completed no later than June 30, 2024.
9. The Department will continue to provide updates on the status of VACS Program administration at the District as well as any additional actions and penalties that may be warranted in response to the deficiencies found.