

NORTH CAROLINA SUPPLEMENTS TO THE NATIONAL ENGINEERING MANUAL

PART 501 – AUTHORIZATIONS

SUBPART A – REVIEW AND APPROVAL

NC501-1-8

- NC501.00** General.
- NC501.03** Compliance of engineering work with laws and regulations.
- NC501.04** Engineering Approval Authority.
- NC501.05** Engineering job review.
- NC501.09** **Request for Assignment of Engineering Job Approval Authority**

PART 501 – AUTHORIZATIONS

SUBPART A – REVIEW AND APPROVAL

NC501.00 General.

- (c) (1) The General Statutes of North Carolina, Chapter 89C provides the State Law regarding the practice of engineering in North Carolina. The NC Board of Examiners for Engineers and Land Surveyors has determined that the design and construction of certain conservation practices contained in Section IV of the FOTG are considered the “practice of engineering” and require the approval of a Registered Professional Engineer. House Bill 810 (SL2007-536) provides limitations on applications of this law such that it cannot prevent “employees of the NRCS, county employees, or employees of the SWCDs who have federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.”
- (2) In effect, this allows NRCS to assign job approval authority to NRCS and district employees for engineering and non-engineering practices when these individual are working in compliance with NRCS policies and procedures, are qualified and have demonstrated competence to perform the practices, and are working under the technical supervision of an NRCS employee.

NC501.03 Compliance of engineering work with laws and regulations.

- (c) (4) When specifically required by State law, engineering plans prepared by NRCS shall be sealed by a registered professional NRCS engineer with appropriate job approval authority.
- (5) It is the responsibility of the NRCS engineer preparing the design to determine if sealing of the plans is required for the specific job. When sealing is required, the design engineer shall affix his/her seal or arrange for a timely and adequate evaluation by the responsible supervising engineer who can then appropriately affix his/her seal.

NC501.04 Engineering Approval Authority.

- (b) (2) (a) The Assistant State Conservationist for Field Operations (ASTC-FO) is responsible for all NRCS activities in his/her area. This includes responsibility for assuring that employees assigned to work in his/her area are competent to carry out their assigned duties. The District Conservationist (DC) is similarly responsible for all NRCS activities in his/her service center. This includes the responsibility for insuring that all employees, NRCS and non-NRCS, under their technical supervision are competent to carry out their assigned tasks.
- (b) The Engineering Job Approval Authority (JAA) system provides a level of liability protection for both individuals and organizations that provide technical assistance in coordination with USDA.

- (c) All NRCS designed dams subject to the Dam Safety Law must have the technical approval of an engineer with appropriate approval authority.
- (d) The ENG-NC-33 shall be used to establish JAA levels for all individuals who provide technical assistance in support of USDA programs, including technical staff employed by NRCS, SWCDs, and other agencies or individuals who are working under the technical supervision of NRCS. The ENG-NC-33 consists of two (2) documents, one for engineering practices and one for non-engineering practices contained in Section IV of the FOTG. Conservation practices that are not needed may be omitted from the working JAA chart developed for individual employees. Approval levels for construction of specified engineering practices may be higher than for design. Dual approval (design/construction) is not required for non-engineering practices.
- (e) North Carolina Procedures:
 - 1) All employees who desire JAA will be evaluated for technical competency to properly plan, design, and implement the conservation practice.
 - 2) For NRCS employees, the Administrative Supervisor will ISSUE Engineering JAA after the Responsible Engineer has provided the Technical Competency Determination for each engineering practice. The responsible engineer shall be the State Conservation Engineer (SCE) for the Supervisory Civil Engineers. The determination of the responsible engineer for all other employees shall be as directed by the Supervisory Civil Engineers for the employees in his/her area. The Administrative Supervisor shall be the ASTC-FO for area staff and shall be the DC for service center staff.
 - 3) For non-NRCS employees, Engineering JAA may be issued after receipt of a "Request for Assignment of Engineering JAA" from the employer. The form found in NC501.09 may be used to make the request. The district chairperson, the employee, and the employee's administrative supervisor must sign the request. The request must include the practices and class level of which Engineering JAA is desired. The request will be provided to the DC, who serves as the employee's Technical Supervisor, for review. After his/her review, the request will be transmitted to the responsible engineer.
 - 4) The responsible engineer shall provide a Technical Competency Determination for the non-NRCS employee to the DC. After the Administrative Supervisor of the non-NRCS employee CONCURS in the JAA, the DC, who serves as the employee's Technical Supervisor, will ISSUE the Engineering JAA.
 - 5) For non-engineering JAA, the Area Resource Conservationist (ARC) or the DC, as applicable, will provide a Technical Competency Certification for each non-engineering practice. For NRCS employees, the Administrative Supervisor will ISSUE the non-engineering JAA. For non-NRCS employees, the DC, who serves as the Technical Supervisor, will ISSUE the non-engineering JAA, after the employee's Administrative Supervisor CONCURS with the JAA.

NC501.05 Engineering job review.

(a) (3) (a) Classes I-V: North Carolina Procedures:

- 1)** When engineering jobs involve complexities of geology, hydrology, or design with which the designer is unfamiliar, the employee should request assistance, as needed, even though the job is within the limits of his/her approval authority.
- 2)** All engineering plans shall be prepared on standard sheets or State approved forms with standard title blocks. They shall be supported by data and computations. Each sheet of the plans and supporting data shall be identified as to the job, who performed the work, and when the work was performed.
- 3)** Copies of the signed plans will be filed to provide an official record of the plan furnished by the Service.
- 4)** IT IS INTENDED FOR ANY EMPLOYEE, WHO IS CAPABLE, TO GATHER BASIC DATA AND PREPARE ENGINEERING PLANS AND SPECIFICATIONS OUTSIDE HIS/HER APPROVAL AUTHORITY. HOWEVER, THE PRACTICE DESIGN SHALL NOT BE CONSIDERED TO MEET NRCS STANDARDS UNTIL IT HAS BEEN REVIEWED AND APPROVED BY A PERSON WITH THE REQUIRED JOB APPROVAL AUTHORITY.
- 5)** All engineering plans will be signed and dated by the person preparing the plans and the person authorized to give technical approval. In many cases, this will be the same person. Furthermore, all engineering plans and calculations will be reviewed and checked prior to approval in accordance with NEM 511.05. The individual approving the design shall determine that an adequate review has been completed prior to approving the design.
- 6)** Approving a practice design and developing a conservation plan are two separate activities. Even though JAA is always required to approve a design, a Certified Conservation Planner may approve a conservation plan that includes a decision to install a conservation practice, even if the planner does not have the required JAA level to approve the practice design.

This page is left blank intentionally.

NC501.09 Request for Assignment of Engineering Job Approval Authority

REQUEST FOR ASSIGNMENT
OF
ENGINEERING JOB APPROVAL AUTHORITY

The _____ requests that NRCS assign Job
Name of requesting SWCD

Approval Authority to _____ for the planning, design, and
Name of Employee

implementation of conservation practices as shown on the attached list of practices.

_____ is a _____, employed by the
Name of employee Job Title

Name of requesting SWCD

We understand and agree that Job Approval Authority (JAA) will be assigned based upon training, experience and demonstrated competence in accordance with NRCS policy for the purpose of implementing conservation programs on agricultural lands (irrespective of funding sources) and that all work performed under this assigned Job Approval Authority will be:

1. Completed under the direct technical supervision and oversight of an NRCS employee.
2. Supported by a sound conservation plan meeting the requirements of: North Carolina Division of Soil and Water Conservation memo regarding conservation planning requirements for Agriculture Cost Share Program contracts dated July 31, 2007 (copy attached); and USDA planning policy requirements contained in the NRCS National Planning Procedures Handbook, General Manual, and supplemental state policies.
3. Completed according to NRCS policies, procedures, standards and specifications; as more specifically defined in the Field Office Technical Guide, National Engineering Manual, the National Planning Procedures Handbook and its North Carolina Supplements.
4. In compliance with the requirements of NC General Statutes GS 89C-25. The certification of engineering practices (as defined by the PE Board) will be restricted to engineering practices installed on agricultural lands.

We also acknowledge that the NRCS State Conservation Engineer has offered the following opinion concerning his understanding of potential district and employee liability associated with the assignment of JAA:

Assigning engineering job approval authority to a district employee by NRCS does not provide liability protection for the district nor does it provide protection to the individual district employee. The federal government cannot provide legal protection for a district employee based solely on the fact that the employee was

operating under a job approval authority established by NRCS. However, if a tort claim is brought against a district employee arising out of district work, the fact that the employee was following NRCS conservation practice standards and had engineering job approval from NRCS for the level of work that was performed, may be helpful in the defense of the suit since NRCS is the acknowledged leader in the field of conservation engineering. Under certain circumstances, the protection of the Federal Tort Claims Act may be extended to district employees when they are carrying out NRCS work. Should the need arise, the determination of Federal Tort Claims Act coverage or protection for districts and district employees will be determined on a case by case basis after an evaluation of the specific facts in each case. The determination is made by the Office of General Counsel (OGC) and not by the NRCS.

We understand that all work performed using NRCS Job Approval Authority must be in accordance with NRCS policies and procedures including compliance with applicable laws and regulations. We will ensure that our conservation activities comply with state and federal laws that address special environmental concerns including Cultural Resources, Threatened and Endangered Species, and Wetlands, and appropriate documentation of these resources shall be properly noted in the job file.

We acknowledge that the above stated requirements and understandings apply to Job Approval Authority assigned for both engineering and non-engineering conservation practices.

We request Job Approval Authority for the conservation practices listed on the attached form.

District Chairman

Date

Concurrence of Employee

Date

Concurrence of Employee's Administrative Supervisor

Date

Michael F. Easley, Governor
William G. Ross Jr., Secretary
Manly S. Wilder, Director



July 31, 2007

Memorandum

TO: ALL SWCD SUPERVISORS AND STAFF

FROM: David B. Williams, Chief,
NPS Programs Section

RE: Conservation Planning for Agriculture Cost Share Program (ACSP) Contracts

Long before any state or federally funded conservation cost share programs existed, North Carolina's soil and water conservation districts were providing sound conservation planning for the state's agricultural producers and landowners. When cost share programs came into existence, their intent was to assist producers and landowners to implement best management practices specified in conservation plans that contribute to specific resource objectives (e.g., water quality).

The conservation planning process should always at least "identify" all the resource concerns observed on the fields that will be affected by a proposed cost share contract. This is called the resource inventory phase of planning. This holistic planning concept is the foundation for the creation of NRCS and Soil and Water Conservation Districts, and distinguishes NRCS/SWCD services from those of other single resource oriented agencies.

Division, Commission, and NRCS policy have long specified that all federal and state cost-share contracts should be supported by a sound conservation plan that meets the USDA planning policy in the National Planning Procedures Handbook, General Manual, and supplemental state policies. Following this guidance ensures the use of public funds is accomplishing a desired environmental objective, and provides a level of liability protection for the planner and his/her organizations.

Since the specific mandated authority for the ACSP focuses on water quality resource concerns, the conservation plan that supports an ACSP contract should at a minimum include (either as planned practices or as recommended alternatives) all the practices needed to address the water quality concerns on the fields affected by the contract. This does not mean that the plan must cover all land that the cooperating farmer tends or owns. The farmer is not required to implement all the practices recommended nor to implement them all at once. Cooperating farmers/landowners should be encouraged to apply a plan progressively.

Progressive implementation means that a practice standard must be met, and that the participant must install all facilitating or supporting practices that are needed for the system to function properly. For example, a waste storage structure should not be planned without also planning nutrient management/waste utilization as a required practice in the plan.

All practices planned must be designed to meet some NRCS FOTG IV standard (or SWCC adopted standard if applicable). Again, this ensures an environmental objective is met,

1614 Mail Service Center, Raleigh, North Carolina 27699-1614
Phone: 919-733-2302 \ FAX: 919-715-3559 \ Internet: www.enr.state.nc.us/DSWC
An Equal Opportunity \ Affirmative Action Employer – 50% Recycled / 10% Post Consumer Paper

One
North Carolina
Naturally

and provides a level of liability protection for the planner and their organizations. For all practices planned, the client must also be provided information on operating and maintaining the practice, as identified in the NRCS FOTG standard.

It is also important to keep in mind that neither NRCS nor SWCD staff are under any obligation to provide cost sharing to a client just because the practice they want is on the cost-list. The practice must be needed to solve an existing resource concern, and it must be the appropriate practice to solve the resource concern. While it is important to take client preferences into consideration during the planning process, the intended purpose of the planned practice(s) must not be compromised. For example, the desire of a client to place a watering facility in a specific location should never override the requirement to place the facility away from surface water and concentrated flow areas.

Attached to this memo is a checklist for districts to consider using to ensure that conservation plans that support ACSP contracts meet the planning policy. **The Division will be using this checklist to spot check cost share files and documentation as part of Program Reviews of each district's implementation of the ACSP beginning with Program Year 2008.** The Division welcomes district feedback on the checklist to make sure that the checklist meets its intended objective without posing an undue burden on district staff.

The Division has consulted with NRCS and wants to ensure that training is not an obstacle to sound conservation planning. Because of the importance of NRCS' Customer Service Toolkit in the planning process for many SWCDs, we would like to make sure that all technical staff that did not receive Toolkit training (and who feel they need the training) have the opportunity to obtain it. The NRCS management Team has also approved a plan to deliver a comprehensive set of GIS training modules for field office Toolkit users. NRCS plans to start offering this training later this year. One of the early modules to be available will be generating Conservation Plan Maps through Toolkit. Other modules currently being designed include making high quality maps, collecting data with GPS and using it in GIS, and using GIS to perform natural resource analysis at the farm, watershed, and county level. We believe this training will be useful to field office staff across all programs. We have also requested NRCS assistance to provide training on progressive conservation planning.

Also, to affirm its support of ensuring sound conservation planning for cost share program implementation, the Commission has approved setting aside a portion of the ACSP Technical Assistance budget to provide a one-time incentive to district employees who become Certified Conservation Planners (CCP) in FY-2007-08. The details have not yet been finalized on how and to whom the incentive will be offered. We will keep you posted as the process is finalized. In the meantime, we encourage district staff to reacquaint themselves with the requirements for becoming a CCP and to begin to integrate CCP requirements into the conservation plans they develop.

Please work through your Area Coordinators to suggest additional training needs that you have to better enable effective conservation planning.

CC: Soil and Water Conservation Commission
Manly Wilder
Mary K. Combs
ACSP Staff
Area Coordinators