

515.116(c)(1) Waiver of Liquidated Damages on Canceled or Terminated EQIP Contracts in Wisconsin

The EQIP Manual (Section 515.116(c)) allows the option of reducing refunds and liquidated damages on canceled or terminated contracts at the discretion of the State Conservationist. However, a waiver can only be granted based on the good faith effort of the producer to comply, or hardship circumstances beyond the producer's control.

Good faith effort and hardship circumstances include any of the following: The producer involuntarily lost control of the land through no fault of the operator; the resource concern no longer exists which originally necessitated the practice that was not installed; extreme health condition of the participant or immediate family member; death of the participant; severe financial hardship due to fire, health, disaster, or other causes; denial of necessary permits from a regulating authority; or other meritorious reason as determined by the State Conservationist.

Specific steps upon cancellation or termination of an EQIP Contract:

A) If the Designated Conservationist is not requesting a waiver or partial waiver of refund requirements or liquidated damages, no approval is needed from the State Conservationist, and the Designated Conservationist may proceed.

B) If the Designated Conservationist is requesting a waiver or partial waiver of refund of payments previously made or liquidated damages, they must:

1. Write a letter that includes the contract holder's name, contract number, total cost share on the contract, total cost share paid out, practice, practice amount contracted, amount of each practice completed, and an explanation in sufficient detail of the reason a waiver is justified. (Form letter attached). The explanation must also include whether a full waiver or a partial waiver of liquidated damages and refunds is being sought (See basis for granting full and partial waivers).
2. Forward the completed request for waiver to the appropriate Assistant State Conservationist for Operations (ASTC-O). If the ASTC-O recommends approval, they will signify by signing on the approval block provided for them, and forward to the State Conservationist for final review. If the ASTC-O disapproves the request, they will sign on the disapproval block, and return the letter to the Designated Conservationist for processing including obtaining the refund of payments previously made and all appropriate liquidated damages. Incomplete requests will be rejected upon review by the ASTC-O and returned to the Designated Conservationist disapproved pending revision.
3. Upon receipt of a request for waiver of refunds and liquidated damages from the ASTC-O, the State Conservationist or Designee will review the request and either approves or disapproves the request within 10 working days of receipt, and return a copy to the ASTC-O and Designated Conservationist for

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appropriate action. If the request is disapproved, a brief rationale for the disapproval will be provided in writing.

Waiver of refunds will be based on the following:

If a justifiable reason exists according to the good faith effort and hardship descriptions provided above, all refunds and liquidated damages will be waived.

If justifiable reasons do not exist, refunds and waivers will be based on the following policy:

- 1) For those practices which are dependent on another contracted practice in order to function properly, and that other practice was not installed, a full refund of the practice cost share paid out for that practice will be required along with full liquidated damages and interest.
- 2) For those practices which have been installed and the producer has not maintained them or the producer indicates they will not maintain and operate them for the designed life of the practice, refunds of the practice cost share paid out for that practice will be required along with full liquidated damages and interest.
- 3) For those practices which may continue to fully function without additional companion practices AND the producer has agreed to continue to maintain and operate for the contract life, refund of cost share payments received will not be required. However liquidated damages will be assessed to recoup agency costs to plan, develop, and administer the contract. No interest will be assessed.
- 4) For contracts from FY 2003 and later involving waste storage, failure to complete all practices will result in full repayment of all cost share funds related to the waste storage facility plus liquidated damages on the entire contract amount. Other individual practices installed which may function independently will be treated as in Items 1, 2, and 3 above. Interest will be charged, as appropriate.
- 5) In all cases, refunds and liquidated damage calculations will be based on the information contained in 515.116 (c) of the EQIP manual dated May 2004 except as revised by any subsequent national or state amendments.

It is in the best interests of the agency that these waivers are determined on a consistent basis statewide so that all producers are treated fairly and equitably. This policy will be reviewed annually, and any needed adjustments made at the time of the review.

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District Conservationist

Assistant State Conservationist-Operations Approval _____

Assistant State Conservationist-Operations Disapproval: _____
Reason for Disapproval:

State Conservationist Approval: _____

State Conservationist Disapproval: _____

Reason for Disapproval:

cc:

Don Baloun, Assistant State Conservationist, Programs, NRCS, Madison, WI
Jan Whitcomb, EQIP Coordinator, NRCS, Madison, WI