

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 100 Session of
1993

INTRODUCED BY COY, LLOYD, DeWEESE, ITKIN, SCHEETZ, BLAUM,
GORDNER, RUDY, HECKLER, STEIGHNER, TIGUE, LESCOVITZ, HALUSKA,
YANDRISEVITS, STEELMAN, MUNDY, PESCI, KUKOVICH, TRELLO,
PISTELLA, FLEAGLE, DALEY, NAILOR, LaGROTTA, STURLA, CLYMER,
BEBKO-JONES, STABACK, KAISER, GODSHALL, GEORGE, SANTONI,
JOSEPHS, KREBS, HERMAN, MAYERNIK, BATTISTO, BUNT, HANNA,
BELARDI, STETLER, COLAFELLA, PRESTON, ROONEY, GRUPPO,
DERMODY, RITTER, COWELL, COLAIZZO, FEE, VEON, EVANS, McCALL
AND KASUNIC, JANUARY 27, 1993

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
FEBRUARY 2, 1993

AN ACT

1 Providing for the management of nutrients on certain
2 agricultural operations to abate nonpoint source pollution,
3 for the certification of nutrient management specialists and
4 for the assessment of other nonpoint sources of nutrient
5 pollution to the waters of this Commonwealth; establishing
6 the Nutrient Management Advisory Board and providing for its
7 powers and duties; establishing the Nutrient Management Fund;
8 and providing for enforcement and penalties.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Short title.

15 This act shall be known and may be cited as the Nutrient
16 Management Act.

17 Section 2. Declaration of legislative purpose.

18 The purposes of this act are as follows:

19 (1) To establish criteria, nutrient management planning
20 requirements and an implementation schedule for the
21 application of nutrient management measures on certain
22 agricultural operations which generate or utilize animal
23 ~~wastes~~ MANURE. <—

24 (2) To provide for the development of an educational
25 program by the State Conservation Commission in conjunction
26 with the Cooperative Extension Service of The Pennsylvania
27 State University, the Department of Agriculture and
28 conservation districts to provide outreach to the
29 agricultural community on the proper utilization and
30 management of nutrients on farms to prevent the pollution of

1 surface water and ground water.

2 (3) To require the State Conservation Commission, in
3 conjunction with the Cooperative Extension Service of The
4 Pennsylvania State University, Department of Environmental
5 Resources, Department of Agriculture and the Nutrient
6 Management Advisory Board to develop and provide technical
7 and financial assistance for nutrient management and
8 alternative uses of animal manure, including a manure
9 marketing and distribution program.

10 (4) To require the Department of Environmental Resources
11 to assess the extent of nonpoint source pollution from other
12 nutrient sources, determine the adequacy of existing
13 authority and programs to manage those sources and make
14 recommendations to provide for the abatement of that
15 pollution.

16 Section 3. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "AEU." Animal equivalent unit.

21 "AEU per acre." An animal equivalent unit per acre of crop
22 land or acre of land suitable for application of animal manure.

23 "Agricultural operations." The management and use of farming
24 resources for the production of crops, livestock or poultry.

25 "Animal equivalent unit." One thousand pounds live weight of
26 livestock or poultry animals, regardless of the actual number of
27 individual animals comprising the unit.

28 "Best management practice" or "BMP." A practice or
29 combination of practices determined by the commission to be
30 effective and practicable (given technological, economic and

1 institutional considerations) to manage nutrients to protect
2 surface and ground water taking into account applicable nutrient
3 requirements for crop utilization. Best management practices
4 include, but are not limited to:

5 (1) Conservation tillage.

6 (2) Crop rotation.

7 (3) Soil testing.

8 (4) Manure testing.

9 (5) Diversions.

10 (6) Manure storage facilities.

11 (7) Storm water management practices.

12 (8) Nutrient application.

13 "Board." The Nutrient Management Advisory Board created by
14 section 8.

15 "Commission." The State Conservation Commission established
16 by the act of May 15, 1945 (P.L.547, No.217), known as the
17 Conservation District Law.

18 "Concentrated animal operation." Agricultural operations
19 meeting the criteria established under this act.

20 "Conservation district." Any county conservation district
21 established under the act of May 15, 1945 (P.L.547, No.217),
22 known as the Conservation District Law.

23 "Cooperative extension." The Cooperative Extension Service
24 of The Pennsylvania State University.

25 "Department." The Department of Environmental Resources of
26 the Commonwealth.

27 "Fund." The Nutrient Management Fund.

28 "Nutrient." A substance or recognized plant nutrient,
29 element or compound which is used or sold for its plant
30 nutritive content or its claimed nutritive value. The term

1 includes, but is not limited to, livestock and poultry manures,
2 compost as fertilizer, commercially manufactured chemical
3 fertilizers, sewage sludge or combinations thereof.

4 "Nutrient management plan." A written site-specific plan
5 which incorporates best management practices to manage the use
6 of plant nutrients for crop production and water quality
7 protection consistent with the criteria established in sections
8 4 and 6.

9 "Nutrient management specialist." A person satisfying the
10 certification requirements of section 7.

11 Section 4. Powers and duties of commission.

12 The commission shall have the following powers and duties:

13 (1) Within two years after the effective date of this
14 act, and periodically thereafter, to promulgate regulations
15 in consultation with the Department of Agriculture, the
16 department and the board, establishing minimum criteria for
17 nutrient management plans developed in accordance with
18 section 6 and other regulatory requirements to implement this
19 act ~~and which shall not be inconsistent with.~~ IN ESTABLISHING <—
20 SUCH CRITERIA, THE COMMISSION SHALL CONSULT THE DEPARTMENT'S
21 MANURE MANAGEMENT FOR ENVIRONMENTAL PROTECTION MANUAL, THE
22 PENNSYLVANIA AGRONOMY GUIDE, PUBLISHED BY THE PENNSYLVANIA
23 STATE UNIVERSITY AND the Pennsylvania Technical Guide for
24 Soil and Water Conservation, published by the United States
25 Department of Agriculture's Soil Conservation Service. The
26 criteria to be established pursuant to this section shall
27 include the following:

28 (i) An identification of nutrients as defined by
29 this act. Unless otherwise appropriate PURSUANT TO <—
30 SPECIFIC CRITERIA WHICH SHALL BE ESTABLISHED BY THE

COMMISSION, THERE SHALL BE a presumption that nitrogen is the nutrient of primary concern.

(ii) The establishment of procedures to determine proper application rates of nutrients to be applied to land based on conditions of soil and levels of existing nutrients in the soil and the type of agricultural, horticultural or floricultural production to be conducted on the land.

(iii) An identification of best management practices to be utilized for proper nutrient management.

(iv) The establishment of recordkeeping requirements related to land application and distribution of nutrients.

(v) The establishment of minimum standards of construction, location, storage capacity and operation of facilities intended to be used for storage of animal manure.

(vi) The establishment of conditions under which ~~modifications in~~ AMENDMENTS TO nutrient management plans ~~or implementation of plans~~ are required to be made after initial development or filing.

(VII) THE ESTABLISHMENT OF SPECIAL CRITERIA WHICH MAY BE UTILIZED FOR MANURE HANDLING IN EMERGENCY SITUATIONS WHERE THERE IS AN OUTBREAK OF A CONTAGIOUS DISEASE.

(VIII) THE ESTABLISHMENT OF CONDITIONS UNDER WHICH CHANGES DUE TO UNFORESEEN CIRCUMSTANCES RENDER THE PLAN AMENDMENT PROCESS SET FORTH IN SECTION 6(E) IMPRACTICABLE. WHERE SUCH CONDITIONS EXIST, THE OWNER OR OPERATOR OF AN AGRICULTURAL OPERATION SHALL FOLLOW THE

1 PROCEDURES SET FORTH IN SECTION 6(F).

2 (2) TO CONTINUALLY EVALUATE EMERGING PRACTICES, METHODS
3 AND TECHNOLOGY FOR UTILIZATION AS BEST MANAGEMENT PRACTICES
4 AND TO SO IDENTIFY SAME, WHERE APPROPRIATE, PURSUANT TO
5 PARAGRAPH (1)(III).

6 ~~(2) Within five~~ (3) FIVE years after the effective date <—
7 of regulations adopted pursuant to paragraph (1), and
8 periodically thereafter, to evaluate the criteria for
9 concentrated animal operations in this Commonwealth and to
10 make appropriate changes IN THOSE CRITERIA by regulation. ANY <—
11 SUCH REGULATORY CHANGE RELATED TO CONCENTRATED ANIMAL
12 OPERATIONS SHALL REQUIRE A TWO-THIRDS MAJORITY VOTE OF THE
13 COMMISSION.

14 ~~(3)~~ (4) Prior to the adoption of regulations under <—
15 paragraph (1), to recommend in consultation with the
16 Department of Agriculture, the department and the board,
17 interim criteria for the sole purpose of facilitating the
18 initial development of the nutrient management certification
19 program established by this act.

20 ~~(4)~~ (5) Within two years after the effective date of <—
21 this act to develop and implement, in cooperation with the
22 Department of Agriculture, the board, the Cooperative
23 Extension and conservation districts, a program to provide
24 education and technical assistance to the agricultural
25 community and, to the extent funds are available, to provide
26 financial assistance to existing agricultural operations for
27 implementation of proper methods, practices, facilities and
28 techniques for the utilization and management of nutrients on
29 the farm to prevent the pollution of ground water and surface
30 water.

1 ~~(5)~~ (6) To consult with the board as provided in section <—
2 8.

3 ~~(6)~~ (7) To issue orders and take actions as are <—
4 necessary to administer and enforce this act.

5 ~~(7)~~ (8) To delegate administration or enforcement <—
6 authority, or both, under this act to county conservation
7 districts that have an adequate program and sufficient
8 resources to accept and implement this delegation.

9 Section 5. Powers and duties of department.

10 The department shall have the following powers and duties:

11 (1) Within one year after the effective date of this
12 act, to make an assessment of and report to the Environmental
13 Quality Board and the General Assembly on the extent to which
14 malfunctioning on-lot sewage systems contribute to the
15 pollution of waters of this Commonwealth, and to identify
16 what regulatory or legislative initiatives, if any, the
17 department deems necessary to abate that pollution.

18 (2) Within one year after the effective date of this
19 act, to make an assessment of and report to the Environmental
20 Quality Board and the General Assembly on the extent to which
21 improper water well construction contributes to groundwater
22 pollution due to the intrusion of nutrients from the surface
23 and to identify what regulatory or legislative initiatives,
24 if any, the department deems necessary to abate that
25 pollution.

26 (3) Within two years after the effective date of this
27 act, to make an assessment of and report to the Environmental
28 Quality Board and the General Assembly on the extent to which
29 the application of chemical fertilizers and other plant
30 nutrients for nonagricultural purposes contributes to the

1 pollution of the waters of this Commonwealth and to identify
2 what regulatory or legislative initiatives, if any, the
3 department deems necessary to abate that pollution.

4 (4) Within two years after the effective date of this
5 act, to make an assessment of and report to the Environmental
6 Quality Board and the General Assembly on the extent to which
7 nutrients from storm water runoff contribute to the pollution
8 of waters of this Commonwealth and to identify what
9 regulatory or legislative initiatives, if any, the department
10 deems necessary to abate that pollution.

11 (5) Within two years after the effective date of this
12 act, to make an assessment of and report to the Environmental
13 Quality Board and the General Assembly on the extent to which
14 atmospheric deposition of nutrients contribute to the
15 pollution of the waters of this Commonwealth and to identify
16 what regulatory or legislative initiatives, if any, the
17 department deems necessary to abate such pollution.

18 (6) To include in the above assessments, recommendations
19 to the General Assembly for budgetary and legislative
20 initiatives where program resources or statutory authority is
21 not adequate to address pollution sources identified therein.

22 (7) To provide technical and administrative assistance
23 to the commission in carrying out its responsibilities under
24 this act.

25 Section 6. Nutrient management plans.

26 (a) Concentrated animal operations.--Concentrated animal
27 operations are those agricultural operations where the animal
28 density exceeds two AEUs per acre on an annualized basis. Five
29 years after the effective date of regulations adopted pursuant
30 to section 4(1), and from time to time thereafter, the

1 commission, in consultation with the Department of Agriculture,
2 the board, the department, and the Cooperative Extension Service
3 shall review the criteria used to identify concentrated animal
4 operations and make appropriate changes to the definition of
5 concentrated animal operations by regulation.

6 (b) Development of nutrient management plans.--The operator
7 of any concentrated animal operation shall develop and implement
8 a nutrient management plan consistent with the requirements of
9 this section.

10 (c) Certification of plans.--All plans AND PLAN AMENDMENTS <—
11 shall be developed by nutrient management specialists who shall
12 certify that the plans are in accordance with the requirements
13 of this act and the regulations promulgated under this act.

14 (d) Review procedure.--Nutrient management plans required by
15 this section shall be submitted for review in accordance with
16 the following schedule:

17 ~~(1) For operations in existence on the effective date of~~ <—
18 ~~regulations promulgated under this act, within one year after~~
19 ~~the effective date of the regulations.~~

20 ~~(2) For operations which come into existence after the~~
21 ~~effective date of regulations promulgated under this act,~~
22 ~~within three months after this date or prior to the time in~~
23 ~~which the operations commence, whichever is later.~~

24 ~~(3) For operations which, because of expansion, meet the~~
25 ~~criteria for concentrated agricultural operations within~~

26 (1) FOR A CONCENTRATED ANIMAL OPERATION IN EXISTENCE ON <—
27 THE EFFECTIVE DATE OF REGULATIONS PROMULGATED UNDER SECTION
28 4(1), WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF SUCH
29 REGULATIONS.

30 (2) FOR A CONCENTRATED ANIMAL OPERATION WHICH COMES INTO

EXISTENCE AFTER THE EFFECTIVE DATE OF REGULATIONS PROMULGATED
UNDER SECTION 4(1), WITHIN THREE MONTHS AFTER SUCH DATE OR
PRIOR TO THE COMMENCEMENT OF OPERATIONS, WHICHEVER IS LATER.

(3) FOR AN AGRICULTURAL OPERATION WHICH, BECAUSE OF
EXPANSION, MEETS THE CRITERIA FOR A CONCENTRATED ANIMAL
OPERATION WITHIN three months after the date of expansion.

(e) Plan review and approval.--Plans or plan ~~modifications~~
AMENDMENTS required under this act shall be submitted to local
conservation districts for review and approval, or alternatively
to the commission for agricultural operations located in
counties not delegated administrative authority under section 4.

Any person performing the plan review must be certified in
accordance with section 7. Within 90 days of receipt of a
nutrient management plan or plan ~~modification~~ AMENDMENT, the
reviewing agency shall either approve, modify or disapprove the
plan or plan ~~modification~~ AMENDMENT. Approvals shall only be
granted for those plans or plan ~~modifications~~ AMENDMENTS which
satisfy the requirements of this act and the regulations

promulgated under this act. Notice of determination to approve,
modify or disapprove a plan or plan ~~modification~~ AMENDMENT shall
be provided in writing to the person submitting same. Notice of
a determination to modify or disapprove shall include an
explanation specifically stating the reasons for modification or
disapproval. If a plan or plan ~~modification~~ AMENDMENT is
disapproved, the person submitting a plan or plan ~~modification~~
AMENDMENT for the first time shall have 90 days after receipt of
notice of disapproval to resubmit ~~an amended~~ A REVISED plan or
plan ~~modification~~ AMENDMENT. An agricultural operation that
submits a complete plan or plan ~~modification~~ AMENDMENT is
authorized to implement the ~~plan~~ SAME if the reviewing agency

1 fails to act within 90 days of submittal. Where the reviewing
2 agency fails to so act and the plan or plan modification <—
3 AMENDMENT is resubmitted and the reviewing agency again fails to <—
4 act within 90 days of resubmittal, ~~the plan~~ IT shall be deemed <—
5 approved.

6 (F) AMENDMENTS DUE TO UNFORESEEN CIRCUMSTANCES.--AMENDMENTS <—
7 TO PLANS OR TO IMPLEMENTATION OF PLANS MADE AFTER INITIAL
8 DEVELOPMENT OR FILING WHICH SATISFY THE CRITERIA ESTABLISHED
9 UNDER SECTION 4(1)(VII) SHALL BE CERTIFIED BY A NUTRIENT
10 MANAGEMENT SPECIALIST PRIOR TO IMPLEMENTATION AND SUBMITTED TO
11 THE DISTRICT WITHIN 30 DAYS OF IMPLEMENTATION.

12 ~~(f) Implementation. Persons conducting agricultural <—~~
13 ~~operations required to develop nutrient management plans~~
14 ~~pursuant to this act shall fully implement these plans within~~
15 ~~three years, unless extended for cause shown. The three year~~
16 ~~implementation schedule shall however be automatically extended~~
17 ~~an additional two years for substantial capital improvements~~
18 ~~required under approved plans for operations required to submit~~
19 ~~plans under subsection (d)(1) where the owner or operator~~
20 ~~demonstrates that the cost of all or part of the improvements~~
21 ~~cannot be financed through available funding mechanisms unless~~
22 ~~at least \$2,000,000 other than Chesapeake Bay nonpoint source~~
23 ~~pollution abatement funds is appropriated for grants and loans~~
24 ~~to the nutrient management fund created under section 10 within~~

25 (G) IMPLEMENTATION.--A PERSON REQUIRED TO DEVELOP A NUTRIENT <—
26 MANAGEMENT PLAN PURSUANT TO SUBSECTION (B) SHALL FULLY IMPLEMENT
27 SUCH PLAN WITHIN THREE YEARS OF THE DATE SUCH PLAN IS APPROVED,
28 OR IS DEEMED APPROVED, OR FOR WHICH IMPLEMENTATION IS OTHERWISE
29 AUTHORIZED PURSUANT TO SUBSECTION (E), UNLESS EXTENDED FOR CAUSE
30 SHOWN OR BY A PLAN AMENDMENT. THE THREE-YEAR IMPLEMENTATION

1 SCHEDULE SHALL BE EXTENDED AN ADDITIONAL TWO YEARS FOR
2 INDIVIDUAL SUBSTANTIAL CAPITAL IMPROVEMENTS REQUIRED UNDER AN
3 APPROVED PLAN FOR AN OPERATION REQUIRED TO SUBMIT A PLAN UNDER
4 SUBSECTION (D)(1) IF:

5 (1) THE OWNER OR OPERATOR DEMONSTRATES THAT THE COST OF
6 ALL OR PART OF THE INDIVIDUAL IMPROVEMENTS FOR WHICH THE
7 EXTENSION IS APPLICABLE CANNOT BE FINANCED THROUGH AVAILABLE
8 FUNDING MECHANISMS; AND

9 (2) A SUM OF \$2,000,000 OR MORE HAS NOT BEEN
10 APPROPRIATED FOR GRANTS AND LOANS TO THE NUTRIENT MANAGEMENT
11 FUND CREATED UNDER SECTION 10, ABOVE AND BEYOND ANY
12 CHESAPEAKE BAY NONPOINT SOURCE POLLUTION ABATEMENT MONEYS
13 THAT MAY BE APPROPRIATED TO THE FUND, WITHIN one year of the
14 effective date of regulations adopted pursuant to section
15 4(1).

16 ~~(g)~~ (H) Voluntary plans.--Any agricultural operation ~~that~~ <—
17 WHICH is not a concentrated animal operation may voluntarily <—
18 develop a nutrient management plan and have it reviewed pursuant
19 to this section. To the extent possible, the commission, the
20 Cooperative Extension Service, the Department of Agriculture,
21 the department and conservation districts shall assist and
22 promote the development of voluntary plans.

23 ~~(h)~~ (I) Financial assistance.--Any agricultural operation <—
24 receiving financial assistance under the Chesapeake Bay Nonpoint
25 Source Pollution Abatement Program or otherwise receiving
26 financial assistance under this act for the development of a
27 nutrient management plan shall agree to develop and implement a
28 nutrient management plan as a condition for receiving this
29 financial assistance.

30 ~~(i)~~ (J) Compliance plans.--Any agricultural operation <—

1 ~~polluting surface or ground water~~ FOUND TO BE IN VIOLATION OF <—
2 THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN
3 STREAMS LAW, may be required to submit a nutrient management
4 plan within three months OR NOTIFICATION THEREOF and implement <—
5 the plan in order to prevent or abate such pollution.

6 ~~(j)~~ (K) Transferability of plans.--A plan approved under <—
7 this section shall be transferable to a subsequent owner of an
8 agricultural ~~operations~~ OPERATION upon notification thereof to <—
9 the district, unless the transfer results in operational changes
10 requiring plan modification pursuant to the criteria established
11 under section 4(1)(vi).

12 (L) CONSTRUCTION OF SECTION.--THE DENSITY CRITERIA FOR <—
13 CONCENTRATED ANIMAL OPERATIONS, AS IDENTIFIED IN SUBSECTION (A)
14 OR AS IT MAY BE SUBSEQUENTLY MODIFIED BY THE COMMISSION, SHALL
15 ONLY BE UTILIZED TO IDENTIFY THOSE AGRICULTURAL OPERATIONS FOR
16 WHICH THE PLANNING REQUIREMENTS OF THIS SECTION SHALL APPLY AND
17 SHALL NOT BE CONSTRUED TO PROHIBIT THE DEVELOPMENT OR EXPANSION
18 OF AGRICULTURAL OPERATIONS MEETING OR EXCEEDING SUCH CRITERIA.

19 Section 7. Nutrient management certification program.

20 (a) Content of program.--The Department of Agriculture shall
21 establish, in consultation with the commission, a ~~program to~~ <—
22 ~~certify individuals that have demonstrated the competence~~
23 NUTRIENT MANAGEMENT CERTIFICATION PROGRAM FOR THE PURPOSE OF <—
24 CERTIFYING INDIVIDUALS WHO HAVE DEMONSTRATED THE COMPETENCY
25 necessary to develop nutrient management plans. The Department
26 of Agriculture, or its designee, shall develop such written
27 testing procedures, educational requirements and examinations
28 ~~and renewal fees~~ as it deems appropriate to carry out its <—
29 responsibilities under this section. ~~The program shall provide~~ <—
30 ~~for such fees and terms of certification as the department deems~~

1 ~~appropriate and shall also provide for individual, commercial~~
2 ~~and public certification categories. The program shall include a~~
3 THE DEPARTMENT OF AGRICULTURE SHALL BY REGULATION ESTABLISH SUCH <—
4 FEES AND TERMS AND CONDITIONS OF CERTIFICATION AS IT DEEMS
5 APPROPRIATE AND ESTABLISH INDIVIDUAL, COMMERCIAL AND PUBLIC
6 CERTIFICATION CATEGORIES, INCLUDING A certification category for
7 farmers to develop and certify nutrient management plans for
8 their own agricultural operations.

9 (b) Interim certification program.--Until the Department of
10 Agriculture develops and implements a certification program,
11 persons having the following qualifications shall, upon request,
12 receive interim certification from the Department of
13 Agriculture.

14 (1) the person has at least two years experience in the
15 development of nutrient management plans;

16 (2) the person is approved to develop nutrient
17 management plans approved under the Chesapeake Bay Nonpoint
18 Source Pollution Abatement Program, the United States
19 Department of Agriculture's Water Quality Improvement
20 Projects Program or other programs requiring submission and
21 approval of a nutrient management plan including sludge
22 disposal under the act of July 7, 1980 (P.L.380, No.97),
23 known as the Solid Waste Management Act; or

24 (3) the person is a farmer who has been provided
25 training and assistance in developing and implementing
26 nutrient management plans.

27 (c) Nutrient management specialist.--A person shall not
28 certify a nutrient management plan ~~without that person first~~ <—
29 ~~satisfying~~ OR PLAN AMENDMENT UNLESS THAT PERSON HAS FIRST <—
30 SATISFIED the requirements of this section.

1 Section 8. Nutrient Management Advisory Board.

2 (a) Creation.--There is hereby created the Nutrient
3 Management Advisory Board. The board shall consist of 15 members
4 appointed by the chairman of the commission and approved by a
5 two-thirds vote of the commission. The members so appointed
6 shall consist of five active commercial farm owners or operators
7 representing the livestock, swine, meat poultry, egg poultry and
8 dairy industry nominated by Statewide general farm organizations
9 ~~with at least one representative from each Statewide farm~~ <—
10 ~~organization~~, one veterinary nutrition specialist, one
11 representative from the feed industry, one representative from
12 the fertilizer industry, one representative of commercial
13 agricultural lenders, one representative of local government,
14 one representative of academia who shall be an agronomist or
15 plant scientist faculty member of the school of agriculture of a
16 Pennsylvania college or university, one hydrologist, two citizen
17 representatives who are not farmers and one environmental
18 representative, all of whom shall have sufficient knowledge,
19 experience or familiarity with agronomic or nutrient management
20 practices and all of whom shall be residents of this
21 Commonwealth.

22 (b) Compensation.--Board members shall not receive a salary
23 but shall be reimbursed for all REASONABLE AND necessary <—
24 expenses incurred in the performance of their duties.

25 (c) Meetings.--A majority of the board shall constitute a
26 quorum. All actions of the board shall be by a majority vote.
27 The board shall meet upon the call of the commission, but not
28 less than semiannually, to carry out its duties under this act.
29 The board shall ANNUALLY select a chairman and such other <—
30 officers as it deems appropriate.

1 (d) Duties.--The board shall ~~provide~~ review and comment on <—
2 all COMMISSION regulations and the interim criteria established <—
3 under section 4(3) ~~of the commission~~ developed to implement the <—
4 ~~provision~~ PROVISIONS of this act. The commission shall have no <—
5 power to promulgate regulations under this act until receipt of
6 written comments on the proposed regulations from the board or
7 until 60 days have expired from the date when the regulations
8 were submitted by the commission to the board for ~~their~~ ITS <—
9 comments. Existing regulations shall continue until modified,
10 superseded or repealed by the commission under this section.

11 (e) Term.--The term of office for each board member shall be
12 three years except that the commission shall stagger the initial
13 terms of the charter members such that five shall serve for one
14 year, five shall serve for two years and five shall serve for
15 three years. Board members may be appointed to successive terms
16 at the discretion of the commission, provided that no member may
17 serve more than two three-year terms.

18 Section 9. Financial assistance.

19 (a) Loans, grants, etc.--The commission shall, to the extent
20 funds are available, provide financial assistance in the form of
21 loans, loan guarantees and grants for the implementation of
22 nutrient management plans for existing agricultural operations.

23 (b) Criteria for eligibility.--In reviewing applications for
24 financial assistance, the commission shall consider the
25 following:

26 (1) Whether the project will improve the health, safety
27 or environment of the people of this Commonwealth and
28 otherwise satisfy the purposes of this act.

29 (2) The cost effectiveness of the proposed practices in
30 comparison with other alternatives.

(3) The applicant's ability to operate or maintain the practices in a proper manner.

(c) Issuance and terms.--~~The~~ SUBJECT TO THIS SECTION, THE commission shall issue loans and set terms applicable thereto in any manner it deems appropriate ~~subject to this section~~. The commission may consider such factors as it deems relevant, including current market interest rates, the financial ability of the applicant to repay, and the necessity to maintain the funds created hereunder in a financially sound manner. Loans may be based on the ability to repay from future revenue to be derived from the applicant's agricultural operation, by a mortgage or other security interest, or by any other fiscal manner which the commission deems appropriate. The board shall have the power to defer principal on loans for up to 12 months. The minimum rate of interest to be paid on any loan made pursuant to this section shall be 1%.

(d) Grants.--Grants shall be made available as follows:

(1) where funds therefore have been made available to the commission, subject to any conditions that may have accompanied the receipt of such funds;

(2) where the commission in its sole discretion, determines that the financial condition of the recipient is such that repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of practices without a grant. ~~and~~

~~(3) where funds are made available therefore, or where the commission determines that a grant is necessary, it shall attempt to mix grant funds with loan funds, if financially possible.~~

(E) GRANTS AND LOANS.--THE COMMISSION SHALL, WHERE IT DEEMS

1 IT APPROPRIATE AND TO THE EXTENT FINANCIAL CIRCUMSTANCES PERMIT,
2 MIX GRANT FUNDS WITH LOAN FUNDS.

3 Section 10. Nutrient Management Fund.

4 (a) Establishment of fund.--There is hereby created a
5 special nonlapsing fund in the State Treasury to be known as the
6 Nutrient Management Fund. All fees, fines, judgments and
7 interest collected by the commission under this act shall be
8 paid into the fund. All money placed in the fund and the
9 interest it accrues are hereby appropriated to the commission on
10 a continuing basis for any activities necessary to meet the
11 requirements of this act.

12 (b) Supplements to fund.--The Nutrient Management Fund may
13 be supplemented by moneys received from the following sources:

- 14 (1) State funds appropriated to the commission.
15 (2) Federal funds appropriated to the commission.
16 (3) Proceeds from the sale of any bonds made available
17 to the commission.
18 (4) Repayment of loan principal.
19 (5) Payment on interest loans made by the commission.
20 (6) Gifts and other contributions from public and
21 private sources.

22 (c) Fund administration.--The commission shall have
23 authority to adopt procedures for the use of moneys in the fund
24 including the creation of accounts within the fund for the
25 purposes of administering the loan and grant programs authorized
26 by this act.

27 (d) Status of fund.--The Nutrient Management Fund shall not
28 be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial
29 computer system).

30 (e) Deposit and use of funds.--No administrative action

1 shall prevent the deposit of moneys into the fund in the fiscal
2 year in which they are received. The funds shall only be used
3 for the purposes authorized by this act and shall not be
4 transferred or diverted to any other purpose by administrative
5 action.

6 Section 11. Unlawful conduct.

7 It shall be unlawful to fail to comply with or to cause or
8 assist in the violation of any order or any of the provisions of
9 this act or the rules and regulations adopted under this act or
10 to fail to comply with a nutrient management plan. ~~or to hinder, <—~~
11 ~~obstruct, prevent or interfere with the commission or any~~
12 ~~conservation district or their personnel in the performance of~~
13 ~~any duty under this act or to deny a conservation district~~
14 ~~employee or agent certified as a nutrient management specialist~~
15 ~~under section 7 access to an agricultural operation. An owner or~~
16 ~~operator of an agricultural operation may, however, impose~~
17 ~~reasonable limitations upon access to a site that are needed to~~
18 ~~prevent the spread or outbreak of contagious diseases.~~

19 Section 12. Civil penalties and remedies.

20 (a) Civil penalty.--In addition to proceeding under any
21 other remedy available at law or in equity for a violation of a
22 provision of this act or a rule or regulation adopted, order
23 issued or nutrient management plan approved under this act, the
24 commission may assess a civil penalty of not more than \$500 for
25 the first day of each offense and \$100 for each additional day
26 of continuing violation. The factors for consideration in
27 determining the amount of the penalty are:

- 28 (1) The gravity of the violation.
29 (2) The potential harm to the public.
30 (3) The potential effect on the environment.

1 (4) The willfulness of the violation.

2 ~~(5) Previous violations and the economic benefit to the~~ <—
3 ~~violation for failing to comply with this act.~~

4 (5) PREVIOUS VIOLATIONS. <—

5 (6) THE ECONOMIC BENEFIT TO THE VIOLATOR FOR FAILING TO
6 COMPLY WITH THIS ACT.

7 Whenever the commission finds that a violation did not cause
8 harm to human health or an adverse effect on the environment,
9 the commission may issue a warning in lieu of assessing a
10 penalty where the OWNER OR operator, upon notice, takes <—
11 immediate action to resolve the violation and come into
12 compliance. If the commission finds the nutrient pollution or
13 the danger of nutrient pollution results from conditions,
14 activities or practices which are being or have been implemented
15 in accordance with a nutrient management plan developed and
16 approved pursuant to and consistent with this act and the
17 regulations developed under this act and which is being or has
18 been fully implemented and maintained, the owner or operator of
19 the agricultural operation shall be exempt from the imposition
20 of penalties under this act.

21 (b) Collection.--In cases of inability to collect the civil
22 penalty or failure of any person to pay all or a portion of the
23 penalty, ~~as the commission may determine,~~ the commission may <—
24 refer the matter to the Office of General Counsel or the Office
25 of Attorney General which shall ~~recover the amount by action in~~ <—
26 ~~the appropriate court~~ INSTITUTE AN ACTION IN THE APPROPRIATE <—
27 COURT TO RECOVER THE PENALTY. Any penalty assessed shall act as
28 a lien on the property of the person against whom the penalty
29 has been assessed.

30 (c) Civil remedies.--In addition to any other remedies

1 provided for in this act, any violation of this act, the rules
2 and regulations promulgated under this act OR any order or <—
3 nutrient management plan approved under this act shall be
4 abatable in the manner provided by law or equity for the
5 abatement of public nuisances. In addition, in order to restrain
6 or prevent any violation of this act or the rules and
7 regulations promulgated under this act or any order or nutrient
8 management plan approved under this act, suits may be instituted
9 in equity or at law in the name of the Commonwealth upon
10 relation of the Attorney General, the General Counsel, the
11 district attorney of any county, the solicitor of any
12 municipality affected or the solicitor of any conservation
13 ~~district after notice has been served upon the Attorney General~~ <—
14 ~~of the intention of the General Counsel, district attorney or~~
15 ~~solicitor~~ DISTRICT, PROVIDED THAT THE GENERAL COUNSEL, DISTRICT <—
16 ATTORNEY OR SOLICITOR SHALL FIRST SERVE NOTICE UPON THE ATTORNEY
17 GENERAL OF THE INTENTION to so proceed. These proceedings may be
18 prosecuted in the Commonwealth Court or in the court of common
19 pleas of the county where the activity has taken place, the
20 condition exists or the public is affected, and, to that end,
21 jurisdiction is hereby conferred in law and equity upon these
22 courts. Except in cases of emergency where, in the opinion of
23 the court, the exigencies of the case require immediate
24 abatement of the nuisance, the court may, in its decree, fix a
25 reasonable time during which the person responsible for the
26 nuisance may make provision for the abatement of same.

27 (d) Equitable relief.--In cases where the circumstances
28 require it or the public health is endangered, a mandatory
29 preliminary injunction, special injunction or temporary
30 restraining order may be issued upon the terms prescribed by the

1 court, notice of the application therefore having been given to
2 the defendant in accordance with the rules of equity practice, <—
3 ~~and in any such case.~~ IN ANY SUCH PROCEEDING the Attorney <—
4 General, the General Counsel, the district attorney or the
5 solicitor of any municipality or conservation district shall not
6 be required to give bond. In any such proceeding, the court
7 shall issue a prohibitory or mandatory preliminary injunction if
8 it finds that the defendant is engaging in unlawful conduct as
9 defined by this act or is engaged in conduct which is causing
10 immediate and irreparable harm to the public. In addition to an
11 injunction, the court in such equity proceeding may assess civil
12 penalties in accordance with this section.

13 Section 13. Limitation of liability.

14 If a person is fully and properly implementing a nutrient
15 management plan ~~developed~~, approved by the local conservation <—
16 district or the commission and maintained under this act for an
17 agricultural operation, the implementation shall be given
18 appropriate consideration as a mitigating factor in any civil
19 action for penalties or damages alleged to have been caused by
20 the management or utilization of nutrients pursuant to the
21 implementation.

22 Section 14. Enforcement AUTHORITY; ENFORCEMENT orders. <—

23 ~~The~~ (A) RIGHT OF ACCESS.--A DULY AUTHORIZED AGENT OF THE <—
24 COMMISSION OR A CONSERVATION DISTRICT SHALL HAVE AUTHORITY TO
25 ENTER ANY AGRICULTURAL OPERATION AT REASONABLE TIMES TO CONDUCT
26 SUCH INVESTIGATIONS AND TO TAKE SUCH ACTIONS AS ARE NECESSARY TO
27 ENFORCE THE PROVISIONS OF THIS ACT OR ANY ORDER, RULE OR
28 REGULATION ISSUED HEREUNDER.

29 (B) DUTY TO GRANT ACCESS.--ANY PERSON OWNING OR OPERATING AN
30 AGRICULTURAL OPERATION SHALL GRANT ACCESS TO ANY DULY AUTHORIZED

1 AGENT OF THE COMMISSION OR A CONSERVATION DISTRICT PURSUANT TO
2 SUBSECTION (A) SHALL NOT HINDER, OBSTRUCT, PREVENT OR INTERFERE
3 WITH SUCH AGENTS IN THE PERFORMANCE OF THEIR DUTIES; PROVIDED,
4 HOWEVER, THAT AGENTS SHALL PERFORM SUCH REASONABLE MEASURES AND
5 ACTIONS AS DIRECTED BY THE OWNER OR OPERATOR OF AN AGRICULTURAL
6 OPERATION AS WILL REASONABLY AND SUBSTANTIALLY PREVENT THE
7 SPREAD OR OUTBREAK OF CONTAGIOUS DISEASES.

8 (C) ORDERS.--THE commission or any conservation district
9 delegated enforcement authority may issue such orders as are
10 necessary to aid in the enforcement of the provisions of this
11 act. Any order issued under this section shall take effect upon
12 notice unless the order specifies otherwise. An appeal OF THE <—
13 ORDER to the Environmental Hearing Board ~~of the order~~ shall not <—
14 act as a supersedeas provided that upon application for and
15 cause shown, the Hearing Board may issue such a supersedeas
16 under the rules established by the Hearing Board.

17 Section 15. Appealable actions.

18 Any person aggrieved by an order or other administrative
19 action of the commission issued pursuant to this act shall have
20 the right, within 30 days from actual or constructive notice of
21 the action, to appeal the action to the Environmental Hearing
22 Board.

23 Section 16. Powers reserved under existing laws.

24 Nothing in this act shall limit in any way whatever the
25 powers conferred upon the commission, Department of Agriculture,
26 department or conservation district under laws other than this
27 act, including, but not limited, to the act of June 22, 1937
28 (P.L.1987, No.394), known as The Clean Streams Law and the act
29 of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
30 Management Act and common law. All such powers are preserved and

1 may be freely exercised. A court exercising general equitable
2 jurisdiction shall not be deprived of such jurisdiction even
3 though a nuisance or condition detrimental to health is subject
4 to regulation or other action by the board under this act.

5 Section 17. Preemption of local ordinances.

6 This act and its provisions are of Statewide concern and
7 occupy the whole field of regulation regarding nutrient
8 management to the exclusion of all local regulations. Upon
9 adoption of the regulations authorized by section 4, no
10 ordinance or regulation of any political subdivision or home
11 rule municipality may prohibit or in any way regulate practices
12 related to the storage, handling or land application of animal
13 manure or nutrients or to the construction, location or
14 operation of facilities used for storage of animal manure or
15 nutrients or practices otherwise regulated by this act if the
16 municipal ordinance or regulation is in conflict with this act
17 and the regulations promulgated thereunder. Nothing in this act
18 shall prevent a political subdivision or home rule municipality
19 from adopting and enforcing ordinances or regulations which are
20 consistent with AND NO MORE STRINGENT THAN the requirements of <—
21 this act and the regulations promulgated under this act, <—
22 PROVIDED, HOWEVER, THAT NO PENALTY SHALL BE ASSESSED UNDER ANY
23 SUCH LOCAL ORDINANCE OR REGULATION FOR ANY VIOLATION FOR WHICH A
24 PENALTY HAS BEEN ASSESSED UNDER THIS ACT.

25 Section 18. Repeals.

26 All acts and parts of acts are repealed insofar as they are
27 inconsistent with this act.

28 Section 19. Effective date.

29 This act shall take effect in 60 days.