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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 496 Session of  
1991

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STURLA, FOX, KREBS, HERSHEY AND CARONE, MARCH 11, 1991

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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
MARCH 11, 1991

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AN ACT

1 Providing for the management of nutrients on certain  
2 agricultural operations to abate nonpoint source pollution;  
3 providing for the certification of nutrient management  
4 specialists; and providing for the assessment of other  
5 nonpoint sources of nutrient pollution to the waters of this  
6 Commonwealth.

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6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Nutrient  
10 Management Act.

11 Section 2. Declaration of legislative purpose.

12 The purposes of this act are to:

13 (1) Establish criteria, planning requirements and an  
14 implementation schedule for the application of nutrient  
15 management control measures on agricultural operations which  
16 generate or utilize animal wastes.

17 (2) Provide for the development of an educational  
18 program by the State Conservation Commission to provide  
19 outreach to the agricultural community on the proper  
20 utilization and management of nutrients on farms to prevent  
21 the pollution of surface water and groundwater.

22 (3) Require the State Conservation Commission to  
23 identify the amount of excess animal manure generated in this  
24 Commonwealth, assess the adequacy of alternative uses or  
25 disposal options and recommend budgetary, regulatory or  
26 legislative initiatives necessary to ensure their  
27 availability.

28 (4) Require the Department of Environmental Resources to  
29 assess the extent of nonpoint source pollution from other  
30 nutrient sources, determine the adequacy of existing

1 authority and programs to control those sources and recommend  
2 budgetary, regulatory and legislative initiatives necessary  
3 to provide for the abatement of that pollution.

#### 4 Section 3. Definitions.

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

8 "AEU per acre." An animal equivalent unit per acre of  
9 cropland or acre of land suitable for agronomic application of  
10 animal manure.

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

13 "Animal equivalent unit." One thousand pounds live weight of  
14 livestock or poultry animals, regardless of the actual number of  
15 individual animals comprising the unit.

16 "Board." The Nutrient Management Advisory Board created by  
17 section 8.

18 "Commercial livestock operation." Any agricultural operation  
19 which maintains domesticated mammals for the commercial  
20 production of milk, meat or other economic value.

21 "Commercial poultry operation." Any agricultural operation  
22 which maintains domesticated fowl for the commercial production  
23 of eggs, meat or other economic value.

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

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

30 "Department." The Department of Environmental Resources of

1 the Commonwealth.

2 "High priority watershed." Any watershed of this  
3 Commonwealth so designated by the Department of Environmental  
4 Resources because critical nonpoint source nutrient pollution  
5 has been identified or quantified.

6 "Nutrient management plan" or "plan." A plan to manage  
7 nutrients for agronomic crop utilization, taking into account  
8 crop rotation, lime requirements, nutrient level in the soil and  
9 nutrients applied, and utilizing best management practices to  
10 prevent the pollution of surface water and groundwater,  
11 including measures to manage fertilizers and animal wastes and  
12 to reduce soil erosion.

13 "Nutrient management specialist." A person satisfying the  
14 certification requirements of section 7.

15 Section 4. Powers and duties of commission.

16 The commission shall have the following powers and duties:

17 (1) Within one year after the effective date of this  
18 act, to identify the amount of excess animal manure generated  
19 in this Commonwealth, to assess the adequacy of alternative  
20 uses or disposal options for animal manure and to recommend  
21 the budgetary, regulatory and legislative initiatives  
22 necessary to ensure their availability.

23 (2) Within two years after the effective date of this  
24 act, to adopt regulations, in consultation with the  
25 department, and the board, establishing criteria for nutrient  
26 management planning, which criteria shall be utilized by  
27 nutrient management specialists in the development of plans  
28 and by conservation districts in reviewing the adequacy of  
29 such plans submitted for approval pursuant to section 6. The  
30 commission shall establish criteria which are consistent with

1 the department's publication entitled "Manure Management for  
2 Environmental Protection" and addenda or amendments thereto  
3 made by the department.

4 (3) Within two years, to develop and implement, in  
5 conjunction with conservation districts, an educational  
6 program for the agricultural community which identifies the  
7 proper methods, practices and techniques for the utilization  
8 and management of nutrients on the farm to prevent the  
9 pollution of surface water and groundwater.

10 (4) To consult with the board in the formulation,  
11 drafting and promulgation of all regulations, policies and  
12 criteria adopted under this act.

13 Section 5. Powers and duties of department.

14 The department shall have the following powers and duties:

15 (1) Within one year after the effective date of this  
16 act, to make an assessment of and report to the Environmental  
17 Quality Board on the extent to which malfunctioning on-lot  
18 sewage systems and sewage system cleaners contribute to the  
19 pollution of the waters of this Commonwealth, and to identify  
20 what regulatory initiatives, if any, the department deems  
21 necessary to abate that pollution.

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

29 (3) Within two years after the effective date of this  
30 act, to make an assessment of and report to the Environmental

1     Quality Board on the extent to which the residential and  
2     commercial application of chemical fertilizers contributes to  
3     the pollution of the waters of this Commonwealth, and to  
4     identify what regulatory initiatives, if any, the department  
5     deems necessary to abate that pollution.

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

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

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

23          (7) To designate high priority watersheds in this  
24    Commonwealth where nutrient pollution poses the greatest risk  
25    to water quality.

26          (8) To issue such orders and take such actions as are  
27    necessary to enforce the provisions of this act.

28          (9) To delegate authority, including, but not limited  
29    to, its enforcement authority under this act to any  
30    conservation district deemed to have an adequate program and

1 sufficient resources to accept such a delegation.

2 Section 6. Nutrient management plans.

3 (a) Development of plan.--Except as otherwise provided in  
4 this section, any person conducting agricultural operations  
5 which:

6 (1) include commercial livestock or poultry operations;

7 (2) utilize the land application of animal manure; or

8 (3) are conducted on an aggregate of ten acres or more;

9 shall develop and file with the appropriate conservation  
10 district a nutrient management plan consistent with this act and  
11 the criteria adopted by the commission pursuant to section 4,  
12 within two years after the adoption of the criteria, for any  
13 such operations in existence as of the date of adoption. Any  
14 operation, as defined by this subsection, which commences  
15 operations after the date of adoption or which, as a result of  
16 expanding its existing commercial livestock or poultry  
17 operation, will meet the density criteria of subsection (c),  
18 after that date, shall develop and file the plans prior to the  
19 commencement or expansion of those operations.

20 (b) Certification of plans.--Prior to filing with the  
21 conservation district, a plan developed pursuant to subsection  
22 (a) shall be certified by a nutrient management specialist as  
23 being in conformance with the criteria adopted by the commission  
24 pursuant to section 4.

25 (c) Plan review and approval.--Nutrient management plans  
26 prepared for operations meeting any of the following criteria  
27 shall be submitted to a local conservation district for review  
28 and approval:

29 (1) Commercial livestock operations where animal density  
30 exceeds two AEU's per acre.

(2) Commercial poultry operations where the animal density exceeds one AEU per acre.

Within 90 days of receipt of a nutrient management plan, a local conservation district shall either approve or disapprove the plan. Approval shall only be granted for these plans which satisfy the criteria established by the commission pursuant to section 4.

(d) Implementation.--Persons conducting agricultural operations required to develop nutrient management plans pursuant to subsection (a) shall fully implement the plans in accordance with the following schedule:

(1) For agricultural operations which come into existence after the date of adoption of criteria under section 4 or which expand existing commercial livestock or poultry operations after that date so as to meet the density criteria of subsection (c), on or before the commencement or expansion of those operations.

(2) For agricultural operations which meet the density criteria of subsection (c) on the date of adoption of criteria under section 4 and which are located in areas designated as high priority watersheds by the department pursuant to section 5(6), within two years of plan approval by the conservation district.

(3) For agricultural operations which meet the density criteria of subsection (c) on the date of adoption of criteria under section 4 and which are not located in high priority watersheds, within four years of plan approval by the conservation district.

(4) For all other agricultural operations, within five years after plan filing with the conservation district.

1 Section 7. Nutrient management certification program.

2 (a) Certification program.--Within one year after the  
3 establishment of criteria by the commission, the Department of  
4 Agriculture shall establish, in consultation with the  
5 commission, a program to certify individuals that have  
6 demonstrated the competence necessary to develop nutrient  
7 management plans that are consistent with the criteria  
8 established pursuant to section 4(b). The Department of  
9 Agriculture, or its designee, shall develop such written testing  
10 procedures, educational requirements and examination and renewal  
11 fees as it deems appropriate to carry out its responsibilities  
12 under this section. The program shall provide for such fees and  
13 terms of certification as the department deems appropriate and  
14 shall also provide for individual, commercial and public  
15 certification categories.

16 (b) Nutrient management specialists.--No person shall  
17 certify a nutrient management plan for an agricultural operation  
18 without that person first satisfying the requirements of the  
19 certification program established pursuant to subsection (a).  
20 Nothing herein shall be construed to prohibit a farmer from  
21 becoming a nutrient management specialist and then certifying  
22 the plan relating to the agricultural operation which the farmer  
23 conducts.

24 Section 8. Nutrient Management Advisory Board.

25 (a) Creation.--There is hereby created the Nutrient  
26 Management Advisory Board to the commission. The board shall  
27 consist of nine members appointed by the commission. The members  
28 shall be residents of this Commonwealth.

29 (b) Compensation.--Board members shall not receive a salary  
30 but shall be reimbursed for all necessary expenses incurred in

1 the performance of their duties.

2 (c) Meetings.--All actions of the board shall be by majority  
3 vote. The board shall meet upon the call of the commission, but  
4 not less than semiannually, to carry out its duties under this  
5 act. The board shall select a chairman and such other officers  
6 as it deems appropriate.

7 (d) Duties.--The board shall provide review and comment on  
8 all regulations, criteria and policies of the commission  
9 developed to implement the provisions of this act. The  
10 commission shall consult with the board in advance of its  
11 adoption of any of the foregoing so as to provide the board with  
12 a reasonable opportunity to meet its obligations under this  
13 subsection.

#### 14 Section 9. Unlawful conduct.

15 It is unlawful to violate any of the provisions of this act  
16 or regulations adopted or orders issued under this act.

#### 17 Section 10. Civil penalties.

18 (a) General rule.--In addition to proceeding under any other  
19 remedy available at law or in equity for a violation of a  
20 provision of this act or a rule or regulation adopted or order  
21 issued under this act, the department may assess a civil penalty  
22 of not more than \$500 for each offense.

23 (b) Factors for consideration.--In determining the amount of  
24 the penalty, the department shall consider the gravity of the  
25 violation. Whenever the department finds a violation which did  
26 not cause harm to human health or unreasonable adverse effect on  
27 the environment, the department may issue a warning in lieu of  
28 assessing a penalty. If the department finds that nutrient  
29 pollution or the danger of nutrient pollution results from an  
30 act of God and from conditions, activities or practices which

1 are the subject of a nutrient management plan developed pursuant  
2 to, and consistent with, this act, and which has been fully  
3 implemented and maintained, the person conducting the  
4 agricultural operation shall be exempt from the imposition of  
5 penalties under this act.

6 (c) Collection.--In cases of inability to collect the civil  
7 penalty or failure of any person to pay all or a portion of the  
8 penalty, as the department may determine, the department may  
9 refer the matter to the Office of Attorney General, which shall  
10 recover the amount by action in the appropriate court.

11 Section 11. Civil remedies.

12 In addition to any other remedies provided for in this act,  
13 the department may initiate in the Commonwealth Court or the  
14 court of common pleas of the county in which the defendant  
15 resides or has his place of business an action in equity for an  
16 injunction to restrain any and all violations of this act or the  
17 rules and regulations promulgated or orders issued pursuant to  
18 this act from which no timely appeal has been taken or which has  
19 been sustained on appeal. In any such proceeding, the court  
20 shall, upon motion of the Commonwealth, issue a preliminary  
21 injunction if it finds that the defendant is engaging in  
22 unlawful conduct, as defined in section 9, or is engaging in  
23 conduct which is causing immediate or irreparable harm to the  
24 public. The Commonwealth shall not be required to furnish bond  
25 or other security in connection with those proceedings. In  
26 addition to an injunction, the court, in the equity proceedings,  
27 may levy civil penalties as provided in section 8.

28 Section 12. Local ordinances.

29 All local ordinances and enactments purporting to regulate  
30 nutrient management practices regulated by this act are hereby

1 preempted to the extent that the ordinances and enactments are  
2 inconsistent with the provisions of this act or regulations  
3 promulgated under this act.

4 Section 13. Severability.

5 The provisions of this act are severable. If any provision of  
6 this act or its application to any person or circumstance is  
7 held invalid, the invalidity shall not affect other provisions  
8 or applications of this act which can be given effect without  
9 the invalid provision or application.

10 Section 14. Repeals.

11 All acts and parts of acts are repealed insofar as they are  
12 inconsistent with this act.

13 Section 15. Effective date.

14 This act shall take effect in 60 days.