

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 496 Session of
1991

INTRODUCED BY COY, BARLEY, WAMBACH, O'DONNELL, BROUJOS, COLE,
KUKOVICH, DeWEESE, PESCI, FEE, COHEN, NOYE, STABACK, TRELLO,
COLAFELLA, TIGUE, HAYDEN, GODSHALL, WOZNIAK, D. R. WRIGHT,
LESCOVITZ, McCALL, SURRA, E. Z. TAYLOR, BUNT, HERMAN, ITKIN,
STISH, PISTELLA, BOWLEY, RUDY, MELIO, CAPPABIANCA, BATTISTO,
STURLA, FOX, KREBS, HERSHEY AND CARONE, MARCH 11, 1991

AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,
HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 10, 1991

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.

TABLE OF CONTENTS

- 7
- 8 Section 1. Short title.
- 9 Section 2. Declaration of legislative purpose.
- 10 Section 3. Definitions.
- 11 Section 4. Powers and duties of commission.
- 12 Section 5. Powers and duties of department.
- 13 Section 6. Nutrient management plans.
- 14 Section 7. Nutrient management certification program.
- 15 Section 8. Nutrient Management Advisory Board.
- 16 Section 9. Unlawful conduct.
- 17 Section 10. Civil penalties.

1 Section 11. Civil remedies.

2 SECTION 12. LIMITATION OF LIABILITY.

<—

3 Section ~~12~~ 13. Local ordinances.

<—

4 Section ~~13~~ 14. Severability.

<—

5 Section ~~14~~ 15. Repeals.

<—

6 Section ~~15~~ 16. Effective date.

<—

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

9 Section 1. Short title.

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

12 Section 2. Declaration of legislative purpose.

13 The purposes of this act are to:

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

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

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

29 (4) Require the Department of Environmental Resources to
30 assess the extent of nonpoint source pollution from other

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

5 Section 3. Definitions.

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

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

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

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

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

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

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

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

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

1 "Department." The Department of Environmental Resources of
2 the Commonwealth.

3 "High priority watershed." Any watershed of this
4 Commonwealth so designated by the ~~Department of Environmental~~ <—
5 ~~Resources~~ STATE CONSERVATION COMMISSION because critical <—
6 nonpoint source nutrient pollution has been identified or
7 quantified.

8 "NUTRIENT." A SUBSTANCE OR RECOGNIZED PLANT NUTRIENT, <—
9 ELEMENT OR COMPOUND WHICH IS USED OR SOLD FOR ITS PLANT
10 NUTRITIVE CONTENT OR ITS CLAIMED PLANT NUTRITIVE VALUE. THE TERM
11 INCLUDES, BUT IS NOT LIMITED TO, LIVESTOCK AND POULTRY MANURES,
12 COMPOST AS FERTILIZER, COMMERCIALY MANUFACTURED CHEMICAL
13 FERTILIZERS, SEWAGE SLUDGE OR COMBINATIONS THEREOF.

14 "Nutrient management plan" or "plan." A plan to manage
15 nutrients for agronomic crop utilization AND THE PROTECTION OF <—
16 GROUNDWATER AND SURFACE WATER, taking into account crop
17 rotation, lime requirements, nutrient level in the soil and
18 nutrients applied, and utilizing best management practices to
19 prevent the pollution of surface water and groundwater,
20 including measures to manage fertilizers and animal wastes and
21 to reduce soil erosion.

22 "Nutrient management specialist." A person satisfying the
23 certification requirements of section 7.

24 Section 4. Powers and duties of commission.

25 The commission shall have the following powers and duties:

26 (1) Within one year after the effective date of this
27 act, to identify the amount of excess animal manure generated
28 in this Commonwealth, to assess the adequacy of alternative
29 uses or disposal options for animal manure and to recommend
30 the budgetary, regulatory and legislative initiatives

1 necessary to ensure ~~their availability.~~

<—

2 ~~(2) Within two years after the effective date of this~~
3 ~~act, to adopt regulations, in consultation with the~~
4 ~~department, and the board, establishing criteria for nutrient~~
5 ~~management planning, which criteria shall be utilized by~~
6 ~~nutrient management specialists in the development of plans~~
7 ~~and by conservation districts in reviewing the adequacy of~~
8 ~~such plans submitted for approval pursuant to section 6. The~~
9 ~~commission shall establish criteria which are consistent with~~
10 ~~the department's publication entitled "Manure Management for~~
11 ~~Environmental Protection" and addenda or amendments thereto~~
12 ~~made by the department.~~

13 ~~(3) Within two years, to develop and implement, in~~
14 ~~conjunction with conservation districts, an educational~~
15 ~~program for the agricultural community which identifies the~~
16 ~~proper methods, practices and techniques for the utilization~~
17 ~~and management of nutrients on the farm to prevent the~~
18 ~~pollution of surface water and groundwater. THAT SUCH USES~~
19 AND DISPOSAL OPTIONS WILL BE READILY AVAILABLE TO GENERATORS
20 OF EXCESS MANURE FOR PROPER MANURE DISPOSITION.

<—

21 (2) WITHIN TWO YEARS AFTER THE EFFECTIVE DATE OF THIS
22 ACT, TO ADOPT REGULATIONS IN CONSULTATION WITH THE DEPARTMENT
23 AND THE BOARD, ESTABLISHING MINIMUM CRITERIA FOR NUTRIENT
24 MANAGEMENT PLANS DEVELOPED IN ACCORDANCE WITH SECTION 6. THE
25 CRITERIA TO BE ESTABLISHED PURSUANT TO THIS SECTION SHALL
26 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

27 (I) AN IDENTIFICATION OF NUTRIENTS AS DEFINED BY
28 THIS ACT.

29 (II) THE ESTABLISHMENT OF PROCEDURES TO DETERMINE
30 MAXIMUM LEVELS OF NUTRIENTS TO BE APPLIED TO LAND, BASED

1 ON CONDITIONS OF SOIL AND LEVELS OF EXISTING NUTRIENTS IN
2 THE SOIL AND THE TYPE OF AGRICULTURAL, HORTICULTURAL OR
3 FLORICULTURAL PRODUCTION TO BE CONDUCTED ON THE LAND.

4 (III) THE ESTABLISHMENT OF RESTRICTIONS RELATED TO
5 THE TIME AND MANNER IN WHICH NUTRIENTS ARE TO BE APPLIED
6 TO LAND.

7 (IV) THE ESTABLISHMENT OF RECORDKEEPING REQUIREMENTS
8 RELATED TO LAND APPLICATIONS OF NUTRIENTS.

9 (V) THE ESTABLISHMENT OF PROCEDURES FOR PERIODIC
10 SOIL AND MANURE ANALYSIS AND EVALUATION, RELATIVE TO
11 PROSPECTIVE LAND APPLICATIONS OF NUTRIENTS.

12 (VI) THE ESTABLISHMENT OF CONDITIONS UNDER WHICH
13 MODIFICATIONS IN NUTRIENT MANAGEMENT PLANS OR
14 IMPLEMENTATION OF PLANS ARE REQUIRED TO BE MADE AFTER
15 INITIAL DEVELOPMENT OR FILING.

16 (VII) THE ESTABLISHMENT OF MINIMUM STANDARDS OF
17 CONSTRUCTION, LOCATION, STORAGE CAPACITY AND OPERATION OF
18 FACILITIES INTENDED TO BE USED FOR STORAGE OF ANIMAL
19 MANURE.

20 THE COMMISSION SHALL NOT ESTABLISH ANY REGULATION WHICH IS
21 INCONSISTENT WITH THE DEPARTMENT'S PUBLICATION ENTITLED
22 "MANURE MANAGEMENT FOR ENVIRONMENTAL PROTECTION" AND ADDENDA
23 OR AMENDMENTS THERETO MADE BY THE DEPARTMENT.

24 (3) PRIOR TO THE ADOPTION OF REGULATIONS UNDER PARAGRAPH
25 (2), THE COMMISSION SHALL HAVE THE AUTHORITY TO ESTABLISH
26 INTERIM CRITERIA CONSISTENT WITH PARAGRAPH (2) AND IN
27 CONSULTATION WITH THE DEPARTMENT OF AGRICULTURE AND THE BOARD
28 TO FACILITATE THE INITIAL DEVELOPMENT OF THE NUTRIENT
29 MANAGEMENT CERTIFICATION PROGRAM ESTABLISHED BY THIS ACT.

30 (4) WITHIN TWO YEARS, TO DEVELOP AND IMPLEMENT, IN

1 CONJUNCTION WITH CONSERVATION DISTRICTS AND THE DEPARTMENT OF
2 AGRICULTURE, A PROGRAM TO PROVIDE EDUCATION AND TECHNICAL
3 ASSISTANCE TO THE AGRICULTURAL COMMUNITY AND, TO THE EXTENT
4 FUNDS ARE AVAILABLE, TO PROVIDE FINANCIAL ASSISTANCE TO
5 INDIVIDUAL FARMERS FOR IMPLEMENTATION OF PROPER METHODS,
6 PRACTICES, FACILITIES AND TECHNIQUES FOR THE UTILIZATION AND
7 MANAGEMENT OF NUTRIENTS ON THE FARM TO PREVENT THE POLLUTION
8 OF GROUNDWATER AND SURFACE WATER.

9 (5) TO DESIGNATE, IN CONSULTATION WITH THE DEPARTMENT,
10 HIGH PRIORITY WATERSHEDS IN THIS COMMONWEALTH TO EXPEDITE THE
11 IMPLEMENTATION OF NUTRIENT MANAGEMENT PLANS IN AREAS WHERE
12 NUTRIENT POLLUTION POSES A SIGNIFICANT RISK TO WATER QUALITY.

13 ~~(4)~~ (6) To consult with the board in the formulation, <—
14 drafting and promulgation of all regulations, policies and
15 criteria adopted under this act.

16 (7) TO ISSUE SUCH ORDERS AND TAKE SUCH ACTIONS AS ARE <—
17 NECESSARY TO ADMINISTER AND ENFORCE THE PROVISIONS OF THIS
18 ACT.

19 (8) TO DELEGATE AUTHORITY, INCLUDING, BUT NOT LIMITED
20 TO, ITS ENFORCEMENT AUTHORITY UNDER THIS ACT, TO ANY
21 CONSERVATION DISTRICT DEEMED TO HAVE AN ADEQUATE PROGRAM AND
22 SUFFICIENT RESOURCES TO ACCEPT SUCH A DELEGATION.

23 Section 5. Powers and duties of department.

24 The department shall have the following powers and duties:

25 (1) Within one year after the effective date of this
26 act, to make an assessment of and report to the Environmental
27 Quality Board on the extent to which malfunctioning on-lot
28 sewage systems ~~and sewage system cleaners~~ contribute to the <—
29 pollution of the waters of this Commonwealth, and to identify
30 what regulatory initiatives, if any, the department deems

1 necessary to abate that pollution.

2 (2) Within one year after the effective date of this
3 act, to make an assessment of and report to the Environmental
4 Quality Board on the extent to which improper water well
5 construction contributes to groundwater pollution due to the
6 intrusion of nutrients from the surface, and to identify what
7 regulatory initiatives, if any, the department deems
8 necessary to abate that pollution.

9 (3) Within two years after the effective date of this
10 act, to make an assessment of and report to the Environmental
11 Quality Board on the extent to which the ~~residential and~~ <—
12 ~~commercial application of chemical fertilizers~~ APPLICATION OF <—
13 CHEMICAL FERTILIZERS FOR NONAGRICULTURAL PURPOSES contributes
14 to the pollution of the waters of this Commonwealth, and to
15 identify what regulatory initiatives, if any, the department
16 deems necessary to abate that pollution.

17 (4) Within two years after the effective date of this
18 act, to make an assessment of and report to the Environmental
19 Quality Board on the extent to which nutrients from storm
20 water runoff contribute to the pollution of the waters of
21 this Commonwealth, and to identify what regulatory
22 initiatives, if any, the department deems necessary to abate
23 that pollution.

24 (5) Within two years after the effective date of this
25 act, to make an assessment of and report to the Environmental
26 Quality Board the extent to which atmospheric deposition
27 contributes to the pollution of the waters of this
28 Commonwealth and identify what regulatory initiatives, if
29 any, the department deems necessary to abate such pollution.

30 (6) To include in the above assessments recommendations

1 to the General Assembly for budgetary and legislative
2 initiatives where program resources or statutory authority is
3 not adequate to address pollution sources identified therein.

4 (7) To ~~designate~~ SUBMIT TO THE COMMISSION WITHIN ONE <—
5 YEAR ITS RECOMMENDATION OF AREAS TO BE DESIGNATED AS high
6 priority watersheds in this Commonwealth where nutrient
7 pollution poses the greatest risk to water quality.

8 ~~(8) To issue such orders and take such actions as are~~ <—
9 ~~necessary to enforce the provisions of this act.~~

10 ~~(9) To delegate authority, including, but not limited~~
11 ~~to, its enforcement authority under this act to any~~
12 ~~conservation district deemed to have an adequate program and~~
13 ~~sufficient resources to accept such a delegation.~~

14 Section 6. Nutrient management plans.

15 ~~(a) Development of plan. Except as otherwise provided in~~ <—
16 ~~this section, any person conducting agricultural operations~~
17 ~~which:~~

18 ~~(1) include commercial livestock or poultry operations;~~

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

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

21 ~~shall develop and file with the appropriate conservation~~
22 ~~district a nutrient management plan consistent with this act and~~
23 ~~the criteria adopted by the commission pursuant to section 4,~~
24 ~~within two years after the adoption of the criteria, for any~~
25 ~~such operations in existence as of the date of adoption. Any~~
26 ~~operation, as defined by this subsection, which commences~~
27 ~~operations after the date of adoption or which, as a result of~~
28 ~~expanding its existing commercial livestock or poultry~~
29 ~~operation, will meet the density criteria of subsection (c),~~
30 ~~after that date, shall develop and file the plans prior to the~~

1 ~~commencement or expansion of those operations.~~

2 ~~(b) Certification of plans. Prior to filing with the~~
3 ~~conservation district, a plan developed pursuant to subsection~~
4 ~~(a) shall be certified by a nutrient management specialist as~~
5 ~~being in conformance with the criteria adopted by the commission~~
6 ~~pursuant to section 4.~~

7 (A) DEVELOPMENT OF PLAN.--EXCEPT AS OTHERWISE PROVIDED IN <—
8 THIS SECTION, A PERSON CONDUCTING AN AGRICULTURAL OPERATION
9 WHICH:

10 (1) INCLUDES COMMERCIAL LIVESTOCK OR POULTRY OPERATIONS,
11 OR BOTH;

12 (2) UTILIZES THE LAND APPLICATION OF ANIMAL MANURE; OR

13 (3) IS CONDUCTED ON AN AGGREGATE OF TEN ACRES OR MORE;

14 SHALL DEVELOP AND MAINTAIN A NUTRIENT MANAGEMENT PLAN CONSISTENT
15 WITH THIS ACT AND THE CRITERIA ADOPTED BY THE COMMISSION
16 PURSUANT TO SECTION 4. FOR SUCH OPERATIONS IN EXISTENCE ON THE
17 DATE WHICH THE CERTIFICATION PROGRAM UNDER SECTION 7 IS
18 ESTABLISHED, PLANS SHALL BE DEVELOPED WITHIN ONE YEAR OF SUCH
19 DATE. FOR ANY SUCH OPERATIONS WHICH COME INTO EXISTENCE AFTER
20 THE DATE OF ESTABLISHMENT OF THE CERTIFICATION PROGRAM UNDER
21 SECTION 7, PLANS SHALL BE DEVELOPED WITHIN THREE MONTHS AFTER
22 SUCH DATE, OR PRIOR TO THE TIME IN WHICH OPERATIONS COMMENCE,
23 WHICHEVER IS LATER. FOR SUCH OPERATIONS WHICH BECAUSE OF THE
24 EXPANSION OF CURRENT ANIMAL UNITS WOULD MEET OR EXCEED THE
25 DENSITY CRITERIA OF SUBSECTION (C), PLANS SHALL BE DEVELOPED
26 WITHIN THREE MONTHS AFTER SUCH DATE, OR PRIOR TO THE TIME IN
27 WHICH SUCH OPERATIONS MEET OR EXCEED SAID CRITERIA, WHICHEVER IS
28 LATER.

29 (B) CERTIFICATION OF PLANS.--A PLAN SHALL NOT BE DEEMED TO
30 BE IN COMPLIANCE WITH SUBSECTION (A), NOR MAY A PLAN BE FILED

1 WITH THE LOCAL CONSERVATION DISTRICT PURSUANT TO SUBSECTION (C),
2 UNLESS SUCH PLAN HAS FIRST BEEN CERTIFIED AS BEING IN COMPLIANCE
3 WITH THE CRITERIA ADOPTED BY THE COMMISSION PURSUANT TO SECTION
4 4.

5 (c) Plan review and approval.--Nutrient management plans
6 prepared for operations meeting any of the following criteria
7 shall be submitted WITHIN THE TIME FRAMES ESTABLISHED IN <—
8 SUBSECTION (A) to a local conservation district for review and
9 approval:

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

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

14 (3) AGRICULTURAL OPERATIONS WHICH MAINTAIN BOTH <—
15 COMMERCIAL LIVESTOCK AND POULTRY OPERATIONS WHERE THE
16 COMBINED ANIMAL DENSITY EXCEEDS TWO AEU'S PER ACRE,
17 CALCULATED BY DOUBLING THE POULTRY AEU(S) PER ACRE AND ADDING
18 THEM TO THE LIVESTOCK AEU(S) PER ACRE.

19 Within 90 days of receipt of a nutrient management plan, a local
20 conservation district shall either approve or disapprove the
21 plan. Approval shall only be granted for ~~these~~ plans which <—

22 satisfy the criteria established by the commission pursuant to

23 section 4. NOTICE OF DETERMINATION TO APPROVE OR DISAPPROVE THE <—

24 PLAN SHALL BE PROVIDED IN WRITING BY THE CONSERVATION DISTRICT

25 TO THE PERSON SUBMITTING THE PLAN. NOTICE OF A DETERMINATION TO

26 DISAPPROVE A PLAN SHALL INCLUDE AN EXPLANATION SPECIFICALLY

27 STATING THE REASONS FOR DISAPPROVAL. FAILURE BY THE LOCAL

28 CONSERVATION DISTRICT TO ISSUE A DETERMINATION WITHIN 90 DAYS OF

29 RECEIPT SHALL CONSTITUTE APPROVAL OF THE PLAN. A PERSON WHOSE

30 NUTRIENT MANAGEMENT PLAN IS REQUIRED TO BE APPROVED BY THE LOCAL

1 CONSERVATION DISTRICT UNDER THIS SUBSECTION SHALL BE DEEMED TO
2 HAVE MET THE REQUIREMENTS OF THIS SECTION IF SUCH PLAN HAS BEEN
3 PROPERLY CERTIFIED AND RECEIVED BY THE CONSERVATION DISTRICT
4 WITHIN THE TIME PRESCRIBED UNDER SUBSECTION (A). IF THE PLAN IS
5 DISAPPROVED BY THE CONSERVATION DISTRICT, SUCH PERSON SHALL HAVE
6 90 DAYS AFTER RECEIPT OF NOTICE OF DISAPPROVAL TO RESUBMIT AN
7 AMENDED PLAN FOR APPROVAL WITHOUT VIOLATION OF THIS SECTION.

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

12 (1) For agricultural operations which come into
13 existence after the date of ~~adoption of criteria under~~ <—
14 ~~section 4~~ ESTABLISHMENT OF THE CERTIFICATION PROGRAM UNDER <—
15 SECTION 7, or which expand existing commercial livestock or
16 poultry operations after that date so as to meet OR EXCEED <—
17 the density criteria of subsection (c), ~~on or before the~~ <—
18 ~~commencement or expansion of those operations.~~ <—
19 WITHIN SIX MONTHS OF THE DATE OF ESTABLISHMENT OF THE CERTIFICATION
20 PROGRAM, OR WITHIN THREE MONTHS OF THE DATE OF PLAN APPROVAL
21 IF APPLICABLE, OR THE DATE SUCH OPERATIONS MEET OR EXCEED THE
22 DENSITY CRITERIA OF SUBSECTION (C), WHICHEVER IS LATEST.

23 (2) For agricultural operations which meet the density
24 criteria of subsection (c) on the date of ~~adoption of~~ <—
25 ~~criteria under section 4~~ ESTABLISHMENT OF THE CERTIFICATION <—
26 PROGRAM UNDER SECTION 7, and which are located in areas
27 designated as high priority watersheds by the ~~department~~ <—
28 COMMISSION pursuant to section ~~5(6)~~ 4(5), within two years of <—
29 plan approval by the conservation district.

30 (3) For agricultural operations which meet the density

criteria of subsection (c) on the date of ~~adoption of~~ <—
~~criteria under section 4~~ ESTABLISHMENT OF THE CERTIFICATION <—
PROGRAM UNDER SECTION 7 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.~~ THE <—
DATE OF ESTABLISHMENT OF THE CERTIFICATION PROGRAM UNDER
SECTION 7.

(E) CONSTRUCTION OF SECTION.--THIS SECTION SHALL NOT BE
CONSTRUED IN ANY WAY AS TO NEGATE THE EXISTENCE OR CONTINUED
EXISTENCE OF AN OPERATION BECAUSE OF THE TRANSFER, IN WHOLE OR
IN PART, OF OWNERSHIP OF SUCH AGRICULTURAL OPERATION; TRANSFER
OF OWNERSHIP OF ANY PROPERTY THAT WAS USED OR IS TO BE USED IN
SUCH OPERATION; TEMPORARY STOPPAGES OF OPERATIONAL ACTIVITIES
DUE TO NORMAL PRODUCTION PRACTICES OR UNEXPECTED NATURAL
CONDITIONS OR SALE, PURCHASE OR OTHER TRANSFER OF ANY COMMODITY
PURSUANT TO, IN FURTHERANCE OF OR RESULTING FROM AGRICULTURAL
PRODUCTION BY SUCH AGRICULTURAL OPERATION.

Section 7. Nutrient management certification program.

(a) Certification program.--Within one year after the
~~establishment of criteria~~ ADOPTION OF REGULATIONS FOR NUTRIENT <—
MANAGEMENT PLANS PURSUANT TO SECTION 4(2) by the commission, the
Department of Agriculture shall establish, in consultation with
the commission, a program to certify individuals that have
demonstrated the competence necessary to develop nutrient
management plans that are consistent with the criteria
established pursuant to section 4(b). The Department of
Agriculture, or its designee, shall develop such written testing
procedures, educational requirements and examination and renewal

1 fees as it deems appropriate to carry out its responsibilities
2 under this section. The program shall provide for such fees and
3 terms of certification as the department deems appropriate and
4 shall also provide for individual, commercial and public
5 certification categories. THE PROGRAM SHALL INCLUDE A
6 CERTIFICATION CATEGORY FOR FARMERS TO CERTIFY NUTRIENT
7 MANAGEMENT PLANS FOR THEIR OWN AGRICULTURAL OPERATIONS.

<—

8 (b) Nutrient management specialists.--No person shall
9 certify a nutrient management plan for an agricultural operation
10 without that person first satisfying the requirements of the
11 certification program established pursuant to subsection (a).

12 ~~Nothing herein shall be construed to prohibit a farmer from~~
13 ~~becoming a nutrient management specialist and then certifying~~
14 ~~the plan relating to the agricultural operation which the farmer~~
15 ~~conducts.~~ A NUTRIENT MANAGEMENT SPECIALIST SHALL NOTIFY THE
16 APPROPRIATE CONSERVATION DISTRICT OF EACH PLAN CERTIFIED BY SUCH
17 SPECIALIST, WHICH NOTICE SHALL IDENTIFY THE NAME AND ADDRESS OF
18 THE OWNER OF THE AGRICULTURAL OPERATION, AS WELL AS ITS LOCATION
19 AND THE DATE OF CERTIFICATION. SUCH NOTICE SHALL BE MADE ON A
20 FORM AND IN A MANNER PRESCRIBED BY THE DEPARTMENT OF
21 AGRICULTURE.

<—

<—

22 Section 8. Nutrient Management Advisory Board.

23 (a) Creation.--There is hereby created the Nutrient
24 Management Advisory Board to the commission. The board shall
25 consist of nine members appointed by the commission. The members
26 SO APPOINTED SHALL CONSIST OF TWO FARMERS, ONE REPRESENTATIVE
27 FROM EACH OF THE POULTRY INDUSTRY, LIVESTOCK INDUSTRY AND
28 FERTILIZER INDUSTRY, ONE REPRESENTATIVE OF LOCAL GOVERNMENT, ONE
29 REPRESENTATIVE OF ACADEMIA, ONE CITIZEN REPRESENTATIVE AND ONE
30 ENVIRONMENTAL REPRESENTATIVE, ALL OF WHOM SHALL HAVE SUFFICIENT

<—

1 KNOWLEDGE, EXPERIENCE OR FAMILIARITY WITH AGRONOMIC OR NUTRIENT
2 MANAGEMENT PRACTICES AND ALL OF WHOM shall be residents of this
3 Commonwealth.

4 (b) Compensation.--Board members shall not receive a salary
5 but shall be reimbursed for all necessary expenses incurred in
6 the performance of their duties.

7 (c) Meetings.--A MAJORITY OF THE BOARD SHALL CONSTITUTE A <—
8 QUORUM. All actions of the board shall be by majority vote. The
9 board shall meet upon the call of the commission, but not less
10 than semiannually, to carry out its duties under this act. The
11 board shall select a chairman and such other officers as it
12 deems appropriate.

13 (d) Duties.--The board shall provide review and comment on
14 all regulations, criteria and policies of the commission
15 developed to implement the provisions of this act. The
16 ~~commission shall consult with the board in advance of its~~ <—
17 ~~adoption of any of the foregoing so as to provide the board with~~
18 ~~a reasonable opportunity to meet its obligations under this~~
19 ~~subsection.~~ COMMISSION SHALL HAVE NO POWER TO ADOPT REGULATIONS <—
20 PURSUANT TO SECTION 4(2) UNTIL RECEIPT OF WRITTEN COMMENTS ON
21 THE PROPOSED REGULATIONS FROM THE BOARD, OR UNTIL 60 DAYS HAVE
22 EXPIRED FROM THE DATE WHEN SUCH REGULATIONS WERE SUBMITTED BY
23 THE COMMISSION TO THE BOARD FOR THEIR COMMENTS. EXISTING
24 REGULATIONS SHALL CONTINUE UNTIL MODIFIED, SUPERSEDED OR
25 REPEALED BY THE COMMISSION UNDER THIS SECTION.

26 (E) TERM.--THE TERM OF OFFICE FOR EACH BOARD MEMBER SHALL BE
27 THREE YEARS, EXCEPT THAT THE COMMISSION SHALL STAGGER THE
28 INITIAL TERMS OF THE CHARTER MEMBERS SUCH THAT THREE SHALL SERVE
29 FOR ONE YEAR, THREE SHALL SERVE FOR TWO YEARS AND THREE SHALL
30 SERVE FOR THREE YEARS. BOARD MEMBERS MAY BE APPOINTED TO

1 SUCCESSIVE TERMS AT THE DISCRETION OF THE COMMISSION.

2 Section 9. Unlawful conduct.

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

5 Section 10. Civil penalties.

6 (a) General rule.--In addition to proceeding under any other
7 remedy available at law or in equity for a violation of a
8 provision of this act or a rule or regulation adopted or order
9 issued under this act, the ~~department~~ COMMISSION may assess a
10 civil penalty of not more than \$500 for each offense. <—

11 (b) Factors for consideration.--In determining the amount of
12 the penalty, the ~~department~~ COMMISSION shall consider the <—
13 gravity of the violation, THE POTENTIAL HARM TO THE PUBLIC, THE <—
14 POTENTIAL EFFECT ON THE ENVIRONMENT, THE WILLFULNESS OF THE
15 VIOLATION, PREVIOUS VIOLATIONS AND THE ECONOMIC BENEFIT TO THE
16 VIOLATOR FOR FAILING TO COMPLY WITH THIS ACT. Whenever the
17 ~~department~~ COMMISSION finds a violation which did not cause harm <—
18 to human health or unreasonable adverse effect on the
19 environment, the ~~department~~ COMMISSION may issue a warning in <—
20 lieu of assessing a penalty. If the ~~department~~ COMMISSION finds <—
21 that nutrient pollution or the danger of nutrient pollution
22 results ~~from an act of God and~~ from conditions, activities or <—
23 practices which ~~are the subject of~~ ARE BEING OR HAVE BEEN <—
24 IMPLEMENTED IN ACCORDANCE WITH a nutrient management plan
25 developed pursuant to, and consistent with, this act, and which
26 IS BEING OR has been fully implemented and maintained, the <—
27 person conducting the agricultural operation shall be exempt
28 from the imposition of penalties under this act.

29 (c) Collection.--In cases of inability to collect the civil
30 penalty or failure of any person to pay all or a portion of the

1 penalty, as the ~~department~~ COMMISSION may determine, the <—
2 ~~department~~ COMMISSION may refer the matter to the Office of <—
3 Attorney General, which shall recover the amount by action in
4 the appropriate court.

5 Section 11. Civil remedies.

6 In addition to any other remedies provided for in this act,
7 the ~~department~~ COMMISSION may initiate in the Commonwealth Court <—
8 or the court of common pleas of the county in which the
9 defendant resides or has his place of business an action in
10 equity for an injunction to restrain any and all violations of
11 this act or the rules and regulations promulgated or orders
12 issued pursuant to this act from which no timely appeal has been
13 taken or which has been sustained on appeal. In any such
14 proceeding, the court shall, upon motion of the Commonwealth,
15 issue a preliminary injunction if it finds that the defendant is
16 engaging in unlawful conduct, as defined in section 9, or is
17 engaging in conduct which is causing immediate or irreparable
18 harm to the public. The Commonwealth shall not be required to
19 furnish bond or other security in connection with those
20 proceedings. In addition to an injunction, the court, in the
21 equity proceedings, may levy civil penalties as provided in
22 section 8 10. <—

23 SECTION 12. LIMITATION OF LIABILITY. <—

24 IF A PERSON IS FULLY AND PROPERLY IMPLEMENTING A NUTRIENT
25 MANAGEMENT PLAN LAWFULLY DEVELOPED AND MAINTAINED UNDER THIS ACT
26 FOR HIS AGRICULTURAL OPERATION, SUCH IMPLEMENTATION SHALL BE
27 DEEMED TO BE AN AFFIRMATIVE DEFENSE IN ANY ENFORCEMENT ACTION
28 TAKEN FOR VIOLATION OF THIS ACT AND SHALL BE GIVEN APPROPRIATE
29 CONSIDERATION AS A MITIGATING FACTOR IN ANY CIVIL ACTION FOR
30 DAMAGES ALLEGED TO HAVE BEEN CAUSED BY THE MANAGEMENT OR

1 UTILIZATION OF NUTRIENTS PURSUANT TO SUCH IMPLEMENTATION.

2 Section ~~12~~ 13. Local ordinances. <—

3 All local ordinances and enactments purporting to regulate
4 ~~nutrient management practices~~ PRACTICES RELATED TO THE STORAGE, <—
5 HANDLING OR LAND APPLICATION OF ANIMAL MANURE OR NUTRIENTS OR TO
6 THE CONSTRUCTION, LOCATION OR OPERATION OF FACILITIES USED FOR
7 STORAGE OF ANIMAL MANURE OR NUTRIENTS OR PRACTICES OTHERWISE
8 regulated by this act are hereby preempted to the extent that
9 the ordinances and enactments are inconsistent with the
10 provisions of this act or regulations promulgated under this
11 act.

12 Section ~~13~~ 14. Severability. <—

13 The provisions of this act are severable. If any provision of
14 this act or its application to any person or circumstance is
15 held invalid, the invalidity shall not affect other provisions
16 or applications of this act which can be given effect without
17 the invalid provision or application.

18 Section ~~14~~ 15. Repeals. <—

19 All acts and parts of acts are repealed insofar as they are
20 inconsistent with this act.

21 Section ~~15~~ 16. Effective date. <—

22 This act shall take effect in 60 days.