

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1646 Session of  
2005

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JUNE 7, 2005

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
JUNE 7, 2005

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, establishing the Office of Ordinance Review and the  
3 Agricultural Review Board; consolidating the Nutrient  
4 Management Act; further providing for scope, for legislative  
5 purpose, for definitions and for administration; providing  
6 for manure application; further providing for nutrient  
7 management and odor management certification; providing for  
8 odor management plans; further providing for the Nutrient  
9 Management Advisory Board, for financial assistance, for  
10 unlawful conduct, for civil penalties and for local  
11 preemption; providing for other statutes and for regulations;  
12 and making a related repeal.

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

15 Section 1. Title 3 of the Pennsylvania Consolidated Statutes  
16 is amended by adding chapters to read:

17 CHAPTER 3

18 AGRICULTURAL REVIEW BOARD

1 Subchapter

2 A. Preliminary Provisions

3 B. Ordinance Review

4 C. Miscellaneous Provisions

5 SUBCHAPTER A

6 PRELIMINARY PROVISIONS

7 Sec.

8 301. Definitions.

9 § 301. Definitions.

10 The following words and phrases when used in this chapter  
11 shall have the meanings given to them in this section, unless  
12 the context clearly indicates otherwise:

13 "Board." The Agricultural Review Board established in  
14 section 312 (relating to board).

15 "Commission." The State Conservation Commission.

16 "Department." The Department of Agriculture of the  
17 Commonwealth.

18 "Local government unit." A political subdivision or local  
19 authority.

20 "Normal agricultural operation." As defined under section 2  
21 of the act of June 10, 1982 (P.L.454, No.133), entitled "An act  
22 protecting agricultural operations from nuisance suits and  
23 ordinances under certain circumstances."

24 "Office." The Office of Ordinance Review established in  
25 section 313 (relating to office).

26 "Secretary." The Secretary of Agriculture of the  
27 Commonwealth.

28 SUBCHAPTER B

29 ORDINANCE REVIEW

30 Sec.

1 311. Prohibition.

2 312. Board.

3 313. Office.

4 314. Review of ordinances.

5 315. Action by office.

6 316. Board hearing.

7 317. Enforcement.

8 318. Advisory opinions.

9 § 311. Prohibition.

10 (a) Ordinance restrictions.--A local government unit may not  
11 adopt an ordinance which does any of the following:

12 (1) Prohibits or limits a normal agricultural operation  
13 unless the local government unit:

14 (i) has express or implied authority under State law  
15 to adopt the ordinance; and

16 (ii) is not prohibited or preempted under State law  
17 from adopting the ordinance.

18 (2) Restricts or limits the ownership structure of a  
19 normal agricultural operation.

20 (b) Existing ordinances.--This chapter shall apply to  
21 enforcement of ordinances existing upon the effective date of  
22 this section and to the enactment or enforcement of local  
23 ordinances enacted on or after the effective date of this  
24 section.

25 (c) Construction.--Nothing in this section shall limit the  
26 powers conferred upon local government units under State law.

27 § 312. Board.

28 (a) Establishment.--There is established within the  
29 department the Agricultural Review Board.

30 (b) Membership.--The board shall consist of the following

1 members:

2 (1) The Secretary or a designee, who shall serve as  
3 Board chairman.

4 (2) The Secretary of Environmental Protection or a  
5 designee.

6 (3) The Secretary of Community and Economic Development  
7 or a designee.

8 (4) Two members appointed by the Governor with the  
9 advice and consent of a majority of the members of the  
10 Senate. One member shall be a dean or faculty member of a  
11 college of agricultural sciences of a State-related  
12 university who is knowledgeable in issues related to animal  
13 agriculture.

14 (c) Terms.--

15 (1) A member under subsection (b)(1) through (3) shall  
16 serve ex officio.

17 (2) Members under subsection (b)(4) shall serve two-year  
18 terms. These members may be reappointed to successive terms  
19 and shall serve until their successors are appointed and  
20 qualified.

21 (d) Official action.--Official action must be by a majority  
22 vote of the five members.

23 (e) Functions.--The board has the following powers and  
24 duties:

25 (1) To administer this chapter.

26 (2) To conduct administrative hearings under section 316  
27 (relating to board hearing). In all proceedings brought  
28 pursuant to this chapter, the board shall have the power to  
29 administer oaths, subpoena witnesses and compel the  
30 production of documents in accordance with law.

1           (3) To appoint such hearing examiners as the board deems  
2 necessary to conduct the hearings required by this chapter.

3           (4) To review proposed administrative adjudications  
4 prepared and recommended by hearing examiners.

5           (5) To issue a final administrative adjudication and  
6 order in a hearing under section 316.

7           (6) To act as a resource of knowledge and expertise for  
8 the department and provide general assistance as requested by  
9 the secretary.

10       (f) Compensation.--Members of the board shall not receive  
11 compensation for their services but shall be entitled to  
12 reimbursement in accordance with Commonwealth regulations for  
13 reasonable travel, lodging and other necessary expenses incurred  
14 in the discharge of duties.

15       (g) Open proceedings.--Proceedings of the board shall be  
16 conducted in accordance with the provisions of 65 Pa.C.S. Ch. 7  
17 (relating to open meetings).

18       (h) Legal counsel.--The department shall provide the board  
19 with legal assistance and representation. An attorney  
20 representing the board may not advise or provide legal  
21 assistance to the office.

22 Section 313. Office.

23       (a) Office established.--There is established within the  
24 commission the Office of Ordinance Review. The office shall  
25 perform the functions described in this chapter.

26       (b) Director and staff.--The chair of the commission shall  
27 appoint the director of the office. The commission shall provide  
28 technical, clerical and administrative staff and support  
29 services for the office.

30       (c) Legal counsel.--The department shall provide the office

1 with legal assistance and representation. An attorney  
2 representing the office may not advise or provide legal  
3 assistance to the board.

4 § 314. Review of ordinances.

5 (a) Application.--

6 (1) Any of the following may file with the office an  
7 application seeking review of an ordinance purported to  
8 violate section 311 (relating to prohibition):

9 (i) A local government unit.

10 (ii) A farm owner or operator, a landowner or  
11 resident in the local government unit in which the  
12 ordinance has been enacted.

13 (2) The application must be in writing and must include  
14 the following information:

15 (i) The name and address of the applicant.

16 (ii) A copy of the ordinance.

17 (iii) Identification of specific concerns with  
18 respect to which the review is sought.

19 (iv) Other information the office may require.

20 (3) The office shall begin accepting applications for  
21 review 90 days following the effective date of this section.

22 (b) Notice.--Within 30 days of receiving an application, the  
23 office shall do all of the following:

24 (1) Provide to the applicant, by regular mail, a written  
25 notice of receipt of the application.

26 (2) Publish notice of receipt of the application in the  
27 Pennsylvania Bulletin and in a newspaper of general  
28 circulation within the appropriate local government unit.

29 (3) Provide, by certified mail, a copy of the  
30 application to the local government unit in which the

1 ordinance was enacted. This paragraph does not apply if the  
2 applicant is the local government unit which enacted the  
3 ordinance.

4 (c) Response to notice.--

5 (1) Any of the following may respond to the application:

6 (i) The local government unit which enacted the  
7 ordinance.

8 (ii) Any farm owner or operator, landowner or  
9 resident of the local government unit which enacted the  
10 ordinance.

11 (2) The response must be made to the office in writing  
12 and must address any issues the responder wishes the office  
13 to consider that are relevant to the criteria established in  
14 section 316(b) (relating to board hearing).

15 (3) The response must be received by the office within  
16 30 days of publication under subsection (b)(2).

17 § 315. Action by office.

18 (a) Review.--Within 60 days of the deadline for receiving  
19 responses under section 314(c)(3) (relating to review of  
20 ordinances), the office shall complete a review of an  
21 application received under section 314 to determine whether the  
22 ordinance identified in the application violates the provisions  
23 of section 311 (relating to prohibition). This review shall  
24 include the subject ordinance, responses and any other relevant  
25 supporting documentation submitted by an applicant or responder.  
26 If the director of the office determines that a review cannot  
27 reasonably be completed within 60 days, the period for review  
28 may be extended for up to an additional 60 days, as the director  
29 determines. However, delay in completing the review beyond the  
30 additional period set by the director shall not affect the

1 office's ability to issue an adjudication and order with respect  
2 to the application.

3 (b) Adjudication and order.--When the office has concluded  
4 the review described in subsection (a), it shall prepare an  
5 adjudication and order with respect to the application. The  
6 office shall consult with the Deputy Secretary for  
7 Administration in the department, the Deputy Secretary for Water  
8 Management at the Department of Environmental Protection and the  
9 Executive Director of the Center for Local Government Services  
10 in the Department of Community and Economic Development in the  
11 preparation of an adjudication and order. Once issued, the  
12 adjudication and order shall not be subject to review or  
13 approval by either the commission or the Environmental Hearing  
14 Board.

15 (c) Notice of adjudication and order.--

16 (1) The office shall serve the adjudication and order  
17 described in subsection (b) upon the applicant and any person  
18 who has filed a response under section 314(c).

19 (2) Service shall be by certified mail or personal  
20 delivery. Notwithstanding this requirement, if a person does  
21 not accept delivery of certified mail within 20 days of the  
22 date it is mailed by the office to a mailing address provided  
23 to the department by that person, the office may serve that  
24 person by regular mail; and service shall be deemed to have  
25 occurred ten days from the date the adjudication and order  
26 are sent by regular mail.

27 (3) The office shall, along with the adjudication and  
28 order, provide the recipient written notice:

29 (i) of the appeal rights described in subsection  
30 (d); and



(ii) that the adjudication and order shall become a final adjudication and order if it is not so appealed.

(d) Appeal.--

(1) A person aggrieved by a decision of the office set forth in an adjudication and order that wishes to appeal the adjudication and order must do so by a written notice to the office, requesting an administrative hearing before the board. The notice must be received by the office within 20 days of service of the notice described in subsection (c). The office shall forward a copy of the appeal notice to the board.

(2) The written appeal notice must clearly identify the person filing the appeal and the basis for the appeal.

§ 316. Board hearing.

(a) Requirement.--Within 60 days of the receipt by the office of an appeal notice under section 315(d) (relating to action by office), the board shall convene an administrative hearing on an application filed under section 314 (relating to review of ordinances). If more than one appeal is filed, the time period under this subsection shall commence upon receipt of the last appeal. A hearing under this section shall be de novo.

(b) Scope.--At the hearing, the board shall review the ordinance to determine whether it violates the provisions of section 311 (relating to prohibition). The office shall participate as a party at the hearing.

(c) Notice.--

(1) The board shall provide written notice of the date, time and location of the hearing to:

(i) each person that filed an appeal notice under section 315(d);

1 (ii) the applicant;

2 (iii) each person that filed a response to the  
3 application under section 314(c); and

4 (iv) the local government unit.

5 (2) The notice must be sent by regular mail and must be  
6 mailed at least ten days before the date of the hearing.

7 (d) Adjudication.--Within 60 days of the hearing, the board  
8 shall issue an adjudication and order. The board shall transmit  
9 to the Pennsylvania Bulletin for publication notice that the  
10 adjudication and order have been issued by the board and are  
11 available from the board upon request.

12 (e) Administrative agency law.--This section is subject to 2  
13 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
14 Commonwealth agencies) and Ch. 7 Subch A (relating to judicial  
15 review of Commonwealth agency action).

16 (f) Right to appeal.--A person aggrieved by a decision of  
17 the board may appeal the decision under 2 Pa.C.S. Ch. 7 Subch.  
18 A. The department shall represent the board in an appeal. The  
19 court may supplement the record if, upon motion from a party,  
20 the court determines that the party was not able to develop an  
21 adequate record before the board.

22 § 317. Enforcement.

23 (a) Cease and desist order.--If an adjudication under  
24 section 315(d) (relating to action by office) or 316(d)  
25 (relating to board hearing) is that an ordinance is in violation  
26 of the provisions of section 311 (relating to prohibition), the  
27 adjudicating body shall order the local government unit to cease  
28 and desist enforcement of the ordinance.

29 (b) Noncompliance.--

30 (1) If a local government unit fails to comply with an

1 order under subsection (a), the secretary shall request the  
2 Attorney General to initiate appropriate legal action to  
3 obtain compliance with the order. The request shall be made  
4 within 30 days of the date the secretary becomes aware of the  
5 noncompliance.

6 (2) Within 60 days of receipt of a request under  
7 paragraph (1), the Attorney General shall initiate an action  
8 in a court of competent jurisdiction to declare the ordinance  
9 invalid.

10 § 318. Advisory opinions.

11 (a) Authorization.--A person authorized to make an  
12 application under section 314(a)(1) (relating to review of  
13 ordinances) may request the office to issue an advisory opinion  
14 on a proposed ordinance in terms of compliance with the  
15 provisions of section 311 (relating to prohibition).

16 (b) Form of request.--The request under subsection (a) shall  
17 be in writing and in a form prescribed by the office and shall  
18 include a copy of the proposed ordinance and any other relevant  
19 documents or information.

20 (c) Content.--The advisory opinion may include suggestions  
21 for modifications that would bring the proposed ordinance into  
22 compliance with the provisions of section 311.

23 SUBCHAPTER C

24 MISCELLANEOUS PROVISIONS

25 Sec.

26 331. Other statutes not affected.

27 332. Commonwealth agencies.

28 333. Regulations.

29 § 331. Other statutes not affected.

30 This chapter shall not be construed to modify, rescind or

1 supersede any other statute or to regulate biosolids. This  
2 chapter shall be construed in pari materia with other statutes.

3 § 332. Commonwealth agencies.

4 Nothing in this chapter shall limit the powers and duties  
5 conferred upon any Commonwealth agencies under statutes other  
6 than this chapter.

7 § 333. Regulations.

8 (a) Authority.--The department is authorized to adopt  
9 regulations to administer this chapter.

10 (b) Interim regulations.--Prior to the promulgation of  
11 regulations under subsection (a), the department shall  
12 promulgate interim regulations to administer this chapter.

13 Regulations under this subsection:

14 (1) are exempt from the act of July 31, 1968 (P.L.769,  
15 No.240), referred to as the Commonwealth Documents Law;

16 (2) are exempt from the act of October 15, 1980  
17 (P.L.950, No.164), known as the Commonwealth Attorneys Act;

18 (3) are exempt from the act of June 25, 1982 (P.L.633,  
19 No.181), known as the Regulatory Review Act; and

20 (4) shall expire two years from the effective date of  
21 this section.

## 22 CHAPTER 5

### 23 NUTRIENT MANAGEMENT AND ODOR MANAGEMENT

24 Sec.

25 501. Scope.

26 502. Declaration of legislative purpose.

27 503. Definitions.

28 504. Powers and duties of commission.

29 505. Powers and duties of Department of Environmental  
30 Protection.

1 506. Nutrient management plans.  
2 507. Manure application setbacks and buffers.  
3 508. Nutrient management certification program and odor  
4 management certification program.  
5 509. Odor management plans.  
6 510. Nutrient Management Advisory Board.  
7 511. Financial assistance.  
8 512. Nutrient Management Fund.  
9 513. Unlawful conduct.  
10 514. Civil penalties and remedies.  
11 515. Limitation of liability.  
12 516. Enforcement authority; enforcement orders.  
13 517. Appealable actions.  
14 518. Powers reserved under existing laws.  
15 519. Preemption of local ordinances.  
16 520. Repeals.  
17 521. Other statutes not affected.  
18 522. Regulations.

19 § 501. Scope.

20 This chapter relates to nutrient management and odor  
21 management.

22 § 502. Declaration of legislative purpose.

23 The purposes of this chapter are as follows:

24 (1) To establish criteria, nutrient management planning  
25 requirements and an implementation schedule for the  
26 application of nutrient management measures on certain  
27 agricultural operations which generate or utilize animal  
28 manure.

29 (2) To provide for the development of an educational  
30 program by the State Conservation Commission in conjunction

1 with the Cooperative Extension Service of The Pennsylvania  
2 State University, the department and conservation districts  
3 to provide outreach to the agricultural community on the  
4 proper utilization and management of nutrients on farms to  
5 prevent the pollution of surface water and ground water.

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

14 (4) To require the Department of Environmental  
15 Protection to assess the extent of nonpoint source pollution  
16 from other nutrient sources, determine the adequacy of  
17 existing authority and programs to manage those sources and  
18 make recommendations to provide for the abatement of that  
19 pollution.

20 (5) To require the State Conservation Commission, in  
21 conjunction with the Nutrient Management Advisory Board, to  
22 develop and administer a regulatory program requiring odor  
23 management plans addressing new and expanded animal housing  
24 facilities and manure management facilities at concentrated  
25 animal operations and concentrated animal feeding operations  
26 after July 19, 1993, and to encourage the voluntary  
27 implementation of odor management plans for other  
28 agricultural operations.

29 § 503. Definitions.

30 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "AEU." Animal equivalent unit.

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

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

8 "Animal equivalent unit." One thousand pounds live weight of  
9 livestock or poultry animals, regardless of the actual number of  
10 individual animals comprising the unit.

11 "Animal housing facility." A roofed structure or facility,  
12 or any portion thereof, used for occupation by livestock or  
13 poultry.

14 "Best management practice" or "BMP." A practice or  
15 combination of practices determined by the commission to be  
16 effective and practicable (given technological, economic and  
17 institutional considerations) to manage nutrients to protect  
18 surface and ground water taking into account applicable nutrient  
19 requirements for crop utilization. The term includes, but is not  
20 limited to:

- 21 (1) Conservation tillage.
- 22 (2) Crop rotation.
- 23 (3) Soil testing.
- 24 (4) Manure testing.
- 25 (5) Diversions.
- 26 (6) Manure storage facilities.
- 27 (7) Storm water management practices.
- 28 (8) Nutrient application.

29 "Board." The Nutrient Management Advisory Board created by  
30 section 510 (relating to Nutrient Management Advisory Board).

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

4 "Concentrated animal feeding operation." An agricultural  
5 operation that meets the criteria established by the Department  
6 of Environmental Protection under authority of the act of June  
7 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

8 "Concentrated animal operation." Agricultural operations  
9 meeting the criteria established under this chapter.

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

13 "Cooperative extension." The Cooperative Extension Service  
14 of The Pennsylvania State University.

15 "Department." The Department of Agriculture of the  
16 Commonwealth.

17 "Fund." The Nutrient Management Fund.

18 "Manure management facility." A manure storage facility,  
19 including a permanent structure or facility, or a portion of a  
20 structure or facility, utilized for the primary purpose of  
21 containing manure. The term includes liquid manure structures,  
22 manure storage ponds, component reception pits and transfer  
23 pipes, containment structures built under a confinement  
24 building, permanent stacking and composting facilities and  
25 manure treatment facilities. The term does not include the  
26 animal confinement areas of poultry houses, horse stalls, free  
27 stall barns or bedded pack animal housing systems.

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  
8 504 (relating to powers and duties of commission) and 506  
9 (relating to nutrient management plans).

10 "Nutrient management specialist." A person satisfying the  
11 certification requirements of section 508 (relating to nutrient  
12 management certification program and odor management  
13 certification program).

14 "Odor management plan." A written site-specific plan  
15 identifying the practices, technologies, standards and  
16 strategies to be implemented to manage the impact of odors  
17 generated from animal housing or manure management facilities  
18 located or to be located on the site.

19 § 504. Powers and duties of commission.

20 The commission shall have the following powers and duties:

21 (1) Before July 19, 1995, and periodically thereafter,  
22 to promulgate regulations, in consultation with the  
23 department, the Department of Environmental Protection and  
24 the board, establishing minimum criteria for nutrient  
25 management plans developed in accordance with section 506  
26 (relating to nutrient management plans) and other regulatory  
27 requirements to implement this chapter. In establishing such  
28 criteria, the commission shall consult the Manure Management  
29 for Environmental Protection Manual of the Department of  
30 Environmental Protection, the Pennsylvania Agronomy Guide,

1 published by The Pennsylvania State University, and the  
2 Pennsylvania Technical Guide for Soil and Water Conservation,  
3 published by the United States Department of Agriculture's  
4 Soil Conservation Service. The criteria to be established  
5 pursuant to this section shall include the following:

6 (i) An identification of nutrients as defined by  
7 this chapter. Unless otherwise appropriate pursuant to  
8 specific criteria which shall be established by the  
9 commission, there shall be a presumption that nitrogen is  
10 the nutrient of primary concern.

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

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

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

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

26 (vi) The establishment of conditions under which  
27 amendments to nutrient management plans are required to  
28 be made after initial development or filing.

29 (vii) The establishment of special criteria which  
30 may be utilized for manure handling in emergency

1 situations where there is an outbreak of a contagious  
2 disease.

3 (viii) The establishment of conditions under which  
4 changes due to unforeseen circumstances render the plan  
5 amendment process set forth in section 506(e)  
6 impracticable. Where such conditions exist, the owner or  
7 operator of an agricultural operation shall follow the  
8 procedures set forth in section 506(f).

9 (1.1) Within two years following the effective date of  
10 this section, and periodically thereafter, to promulgate  
11 regulations, in consultation with the department, the  
12 Department of Environmental Protection and the board,  
13 establishing practices, technologies, standards, strategies  
14 and other requirements for odor management plans developed  
15 in accordance with section 509 (relating to odor management  
16 plans). The commission shall consider the following in  
17 promulgating the regulations under this paragraph:

18 (i) Site-specific factors such as proximity to  
19 adjoining landowners, land use of the surrounding area,  
20 type of structures proposed, species of animals, local  
21 topography and direction of the prevailing winds.

22 (ii) Reasonably available technology, practices,  
23 standards and strategies to manage odor impacts,  
24 considering both the practical and economic feasibility  
25 of installation and operation and the potential impacts  
26 from the facilities. Only those technologies, practices,  
27 standards and strategies that are necessary to address  
28 the off-site impacts of odors associated with these new  
29 facilities will be required to be included in the odor  
30 management plans.

1           (2) Prior to the adoption of regulations under paragraph  
2           (1.1), to establish interim guidelines for the operations  
3           identified in section 509.

4           (3) To continually evaluate emerging practices, methods  
5           and technology for utilization as best management practices  
6           and to so identify the practices, where appropriate, pursuant  
7           to paragraph (1)(iii).

8           (4) Beginning October 1, 2002, to evaluate the criteria  
9           for concentrated animal operations in this Commonwealth and  
10          to make appropriate changes in those criteria by regulation.  
11          Any such regulatory change related to concentrated animal  
12          operations shall require a two-thirds majority vote of the  
13          commission.

14          (5) Prior to the adoption of regulations under paragraph  
15          (1), to recommend, in consultation with the Department of  
16          Environmental Protection, 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 chapter.

20          (6) Before July 19, 1995, to develop and implement, in  
21          cooperation with the department, the board, the Cooperative  
22          Extension Service and conservation districts, a program to  
23          provide education and technical assistance to the  
24          agricultural community and, to the extent funds are  
25          available, to provide financial assistance to existing  
26          agricultural operations for implementation of proper methods,  
27          practices, facilities and techniques for the utilization and  
28          management of nutrients on the farm to prevent the pollution  
29          of groundwater and surface water.

30          (7) To consult with the board as provided in section 510

(relating to Nutrient Management Advisory Board).

(8) To issue orders and take actions as are necessary to administer and enforce this chapter.

(9) To delegate administration or enforcement authority, or both, under this chapter to county conservation districts that have an adequate program and sufficient resources to accept and implement this delegation.

§ 505. Powers and duties of Department of Environmental Protection.

The Department of Environmental Protection shall have the following powers and duties:

(1) Before July 19, 1994, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which malfunctioning on-lot sewage systems contribute to the pollution of waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(2) Before July 19, 1994, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which improper water well construction contributes to groundwater pollution due to the intrusion of nutrients from the surface and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(3) Before July 19, 1995, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which the application of chemical fertilizers and other plant nutrients for nonagricultural

1 purposes contributes to the pollution of the waters of this  
2 Commonwealth and to identify what regulatory or legislative  
3 initiatives, if any, the Department of Environmental  
4 Protection deems necessary to abate that pollution.

5 (4) Before July 19, 1995, to make an assessment of and  
6 report to the Environmental Quality Board and the General  
7 Assembly on the extent to which nutrients from storm water  
8 runoff contribute to the pollution of waters of this  
9 Commonwealth and to identify what regulatory or legislative  
10 initiatives, if any, the Department of Environmental  
11 Protection deems necessary to abate that pollution.

12 (5) Before July 19, 1995, to make an assessment of and  
13 report to the Environmental Quality Board and the General  
14 Assembly on the extent to which atmospheric deposition of  
15 nutrients contribute to the pollution of the waters of this  
16 Commonwealth and to identify what regulatory or legislative  
17 initiatives, if any, the Department of Environmental  
18 Protection deems necessary to abate that pollution.

19 (6) To include in the assessments in paragraphs (1)  
20 through (5), recommendations to the General Assembly for  
21 budgetary and legislative initiatives where program resources  
22 or statutory authority is not adequate to address pollution  
23 sources identified in those assessments.

24 (7) To provide technical and administrative assistance  
25 to the commission in carrying out its responsibilities under  
26 this chapter.

27 § 506. Nutrient management plans.

28 (a) Concentrated animal operations.--Concentrated animal  
29 operations are those agricultural operations where the animal  
30 density exceeds two AEU's per acre on an annualized basis.

1 Beginning October 1, 2002, the commission, in consultation with  
2 the department, the board, the Department of Environmental  
3 Protection and the Cooperative Extension Service shall review  
4 the criteria used to identify concentrated animal operations and  
5 make appropriate changes to the definition of concentrated  
6 animal operations by regulation.

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

11 (c) Certification of plans.--All plans and plan amendments  
12 shall be developed by nutrient management specialists who shall  
13 certify that the plans are in accordance with the requirements  
14 of this chapter and the regulations promulgated under this  
15 chapter.

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

19 (1) For a concentrated animal operation in existence on  
20 October 1, 1997, by October 1, 1998.

21 (2) For a concentrated animal operation which comes into  
22 existence after October 1, 1997, by the later of:

23 (i) January 1, 1998; or

24 (ii) commencement of operations.

25 (3) For an agricultural operation which, because of  
26 expansion, meets the criteria for a concentrated animal  
27 operation, within three months after the date of expansion.

28 (e) Plan review and approval.--Plans or plan amendments  
29 required under this chapter shall be submitted to local  
30 conservation districts for review and approval or alternatively

1 to the commission for agricultural operations located in  
2 counties not delegated administrative authority under section  
3 504 (relating to powers and duties of commission). Any person  
4 performing the plan review must be certified in accordance with  
5 section 508 (relating to nutrient management certification  
6 program and odor management certification program). Within 90  
7 days of receipt of a nutrient management plan or plan amendment,  
8 the reviewing agency shall either approve, modify or disapprove  
9 the plan or plan amendment. Approvals shall only be granted for  
10 those plans or plan amendments which satisfy the requirements of  
11 this chapter and the regulations promulgated under this chapter.  
12 Notice of determination to approve, modify or disapprove a plan  
13 or plan amendment shall be provided in writing to the person  
14 submitting same. Notice of a determination to modify or  
15 disapprove shall include an explanation specifically stating the  
16 reasons for modification or disapproval. If a plan or plan  
17 amendment is disapproved, the person submitting a plan or plan  
18 amendment for the first time shall have 90 days after receipt of  
19 notice of disapproval to resubmit a revised plan or plan  
20 amendment. An agricultural operation that submits a complete  
21 plan or plan amendment is authorized to implement the same if  
22 the reviewing agency fails to act within 90 days of submittal.  
23 Where the reviewing agency fails to so act and the plan or plan  
24 amendment is resubmitted and the reviewing agency again fails to  
25 act within 90 days of resubmittal, it shall be deemed approved.

26 (f) Amendments due to unforeseen circumstances.--Amendments  
27 to plans or to implementation of plans made after initial  
28 development or filing which satisfy the criteria established  
29 under section 504(1)(vii) shall be certified by a nutrient  
30 management specialist prior to implementation and submitted to



1 the district within 30 days of implementation.

2 (g) Implementation.--A person required to develop a nutrient  
3 management plan pursuant to subsection (b) shall fully implement  
4 such plan within three years of the date such plan is approved,  
5 or is deemed approved, or for which implementation is otherwise  
6 authorized pursuant to subsection (e), unless extended for cause  
7 shown or by a plan amendment. The three-year implementation  
8 schedule shall be extended an additional two years for  
9 individual substantial capital improvements required under an  
10 approved plan for an operation required to submit a plan under  
11 subsection (d)(1) if:

12 (1) the owner or operator demonstrates that the cost of  
13 all or part of the individual improvements for which the  
14 extension is applicable cannot be financed through available  
15 funding mechanisms; and

16 (2) a sum of \$2,000,000 or more has not been  
17 appropriated for grants and loans to the Nutrient Management  
18 Fund created under section 512 (relating to Nutrient  
19 Management Fund), above and beyond any Chesapeake Bay  
20 nonpoint source pollution abatement moneys that may be  
21 appropriated to the fund, before October 1, 1998.

22 (h) Voluntary plans.--Any agricultural operation which is  
23 not a concentrated animal operation may voluntarily develop a  
24 nutrient management plan and have it reviewed pursuant to this  
25 section. To the extent possible, the commission, the Cooperative  
26 Extension Service, the department, the Department of  
27 Environmental Protection and conservation districts shall assist  
28 and promote the development of voluntary plans.

29 (i) Financial assistance.--Any agricultural operation  
30 receiving financial assistance under the Chesapeake Bay Nonpoint

1 Source Pollution Abatement Program or otherwise receiving  
2 financial assistance under this chapter for the development of a  
3 nutrient management plan shall agree to develop and implement a  
4 nutrient management plan as a condition for receiving this  
5 financial assistance.

6 (j) Compliance plans.--Any agricultural operation found to  
7 be in violation of the act of June 22, 1937 (P.L.1987, No.394),  
8 known as The Clean Streams Law, may be required to submit a  
9 nutrient management plan within three months of notification  
10 thereof and implement the plan in order to prevent or abate such  
11 pollution.

12 (k) Transferability of plans.--A plan approved under this  
13 section shall be transferable to a subsequent owner of an  
14 agricultural operation upon notification thereof to the  
15 district, unless the transfer results in operational changes  
16 requiring plan modification pursuant to the criteria established  
17 under section 504(1)(vi).

18 (l) Construction of section.--The density criteria for  
19 concentrated animal operations as identified in subsection (a)  
20 or as it may be subsequently modified by the commission shall  
21 only be utilized to identify those agricultural operations for  
22 which the planning requirements of this section shall apply and  
23 shall not be construed to prohibit the development or expansion  
24 of agricultural operations meeting or exceeding such criteria.

25 § 507. Manure application setbacks and buffers.

26 (a) General rule.--Unless the commission establishes a  
27 stricter requirement by regulation, no concentrated animal  
28 operation, or other agricultural operation receiving manure from  
29 a concentrated animal operation directly or indirectly through a  
30 broker or other person, may mechanically land apply manure

1 within 100 feet of surface water, unless a vegetated buffer no  
2 less than 35 feet in width and meeting standards established by  
3 the Natural Resources Conservation Service is used to prevent  
4 manure runoff into the surface water.

5 (b) Definition.--As used in this section, the term "surface  
6 water" means a perennial or intermittent stream with a defined  
7 bed and bank, a lake or a pond.

8 § 508. Nutrient management certification program and odor  
9 management certification program.

10 (a) Requirement.--The department shall establish, in  
11 consultation with the commission, a nutrient management  
12 certification program for the purpose of certifying individuals  
13 who have demonstrated the competency necessary to develop  
14 nutrient management plans and an odor management certification  
15 program for the purpose of certifying individuals who have  
16 demonstrated the competency necessary to develop odor management  
17 plans. The department or its designee shall develop such written  
18 testing procedures, educational requirements and examinations as  
19 it deems appropriate to carry out its responsibilities under  
20 this section. The department shall by regulation establish such  
21 fees and terms and conditions of certification as it deems  
22 appropriate. The department shall establish individual,  
23 commercial and public certification categories, including a  
24 certification category for farmers to develop and certify  
25 nutrient management plans and odor management plans for their  
26 own agricultural operations.

27 (b) Interim nutrient management certification program.--  
28 Until the department develops and implements a nutrient  
29 management certification program, persons having the following  
30 qualifications shall, upon request, receive interim

1 certification from the department.

2 (1) the person has at least two years' experience in the  
3 development of nutrient management plans;

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

12 (3) the person is a farmer who has been provided  
13 training and assistance in developing and implementing  
14 nutrient management plans.

15 (c) Nutrient management specialist.--A person shall not  
16 certify a nutrient management plan or plan amendment unless that  
17 person has first satisfied the requirements of this section.

18 (d) Odor management specialist.--A person shall not certify  
19 an odor management plan or plan amendment unless that person has  
20 first satisfied the applicable requirements of this section.

21 § 509. Odor management plans.

22 (a) Requirement.--

23 (1) The following operations shall develop and implement  
24 an odor management plan as described in this chapter:

25 (i) Existing concentrated animal operations and  
26 existing concentrated animal feeding operations, when  
27 doing any of the following:

28 (A) Erecting or constructing a new animal  
29 housing facility or a new manure management facility.

30 The odor management plan required by this paragraph

1 shall be developed and implemented only with respect  
2 to the new facility.

3 (B) Erecting or constructing an expansion of an  
4 animal housing facility or a manure management  
5 facility. The odor management plan required by this  
6 paragraph shall be developed and implemented only  
7 with respect to the newly erected or newly  
8 constructed portion of the facility.

9 (ii) Existing agricultural operations which, because  
10 of an increase, resulting from expansion or construction,  
11 in the number of animals maintained at the operation,  
12 will become regulated as either a concentrated animal  
13 operation or a concentrated animal feeding operation. The  
14 odor management plan required by this paragraph shall be  
15 developed and implemented only with respect to the newly  
16 expanded or newly constructed portion of the operation.

17 (iii) New agricultural operations which will be  
18 regulated as either a concentrated animal operation or a  
19 concentrated animal feeding operation.

20 (2) The operations described in paragraph (1)(i) and  
21 (ii) shall obtain approval of their odor management plan  
22 prior to the earlier of erection or construction of new or  
23 expanded animal housing facilities or the construction of new  
24 or expanded manure management facilities.

25 (b) Certification of plans.-- All odor management plans and  
26 plan amendments shall be developed by odor management  
27 specialists who shall certify that the plans are in accordance  
28 with the requirements of the odor management regulations  
29 promulgated under this chapter.

30 (c) Reviewing entities.--Odor management plans or plan

1 amendments required by this section shall be submitted to the  
2 commission for review and approval or, at the commission's  
3 discretion, to the appropriate local conservation district for  
4 review and approval.

5 (d) Plan review and approval.--Any person performing the  
6 plan review must be certified in accordance with section 508  
7 (relating to nutrient management certification program and odor  
8 management certification program). Within 90 days of receipt of  
9 an odor management plan or plan amendment, the reviewing agency  
10 shall approve or disapprove the plan or plan amendment.  
11 Approvals shall only be granted for those plans or plan  
12 amendments which satisfy the requirements of the regulations  
13 promulgated under this chapter. Notice of determination to  
14 approve or disapprove a plan or plan amendment shall be provided  
15 in writing to the person submitting same. Notice of a  
16 determination to disapprove shall include an explanation  
17 specifically stating the reasons for disapproval. If a plan or  
18 plan amendment is disapproved, the person submitting a plan or  
19 plan amendment for the first time shall have 90 days after  
20 receipt of notice of disapproval to resubmit a revised plan or  
21 plan amendment. An existing or proposed concentrated animal  
22 operation or concentrated animal feeding operation that submits  
23 a complete plan or plan amendment is authorized to implement the  
24 same if the reviewing agency fails to act within 90 days of  
25 submittal.

26 (e) Implementation.--A person required to have an odor  
27 management plan under this section shall fully implement the  
28 plan prior to commencing use of the new animal housing facility  
29 or animal manure facility.

30 (f) Voluntary plans.-- Any agricultural operation which is

1 not required to comply with subsection (a) may voluntarily  
2 develop an odor management plan and have it reviewed pursuant to  
3 this section. To the extent possible, the commission, the  
4 Cooperative Extension Service, the department, the Department of  
5 Environmental Protection and conservation districts shall assist  
6 and promote the development of voluntary plans.

7 (g) Transferability of plans.--A plan approved under this  
8 section shall be transferable to a subsequent owner of an  
9 agricultural operation upon notification thereof to the  
10 district, unless the transfer results in operational changes  
11 requiring plan modification pursuant to the criteria established  
12 in this section.

13 (h) Effectiveness of the section.--The requirements of this  
14 section shall become mandatory 90 days following the effective  
15 date of the regulations promulgated under section 504(1.1)  
16 (relating to powers and duties of commission).

17 § 510. Nutrient Management Advisory Board.

18 (a) Creation.--There is created the Nutrient Management  
19 Advisory Board. The board shall consist of 16 members appointed  
20 by the chairman of the commission and approved by a two-thirds  
21 vote of the commission. The members so appointed shall consist  
22 of five active commercial farm owners or operators representing  
23 the livestock, swine, meat poultry, egg poultry and dairy  
24 industry nominated by Statewide general farm organizations, one  
25 veterinary nutrition specialist, one representative from the  
26 feed industry, one representative from the fertilizer industry,  
27 one representative of commercial agricultural lenders, one  
28 representative of local government, one representative of  
29 academia who shall be an agronomist or plant scientist faculty  
30 member of the school of agriculture of a Pennsylvania college or

1 university, one representative of academia who shall be an  
2 animal science faculty member with an expertise in odor  
3 management from the school of agriculture of a college or  
4 university within this Commonwealth, one hydrologist, two  
5 citizen representatives who are not farmers and one  
6 environmental representative, all of whom shall have sufficient  
7 knowledge, experience or familiarity with agronomic practices,  
8 nutrient management practices or odor management practices and  
9 all of whom shall be residents of this Commonwealth.

10 (b) Compensation.--Board members shall not receive a salary  
11 but shall be reimbursed for all reasonable and necessary  
12 expenses incurred in the performance of their duties.

13 (c) Meetings.--A majority of the board shall constitute a  
14 quorum. All actions of the board shall be by a majority vote.  
15 The board shall meet upon the call of the commission, but not  
16 less than semiannually, to carry out its duties under this  
17 chapter. The board shall annually select a chairman and such  
18 other officers as it deems appropriate.

19 (d) Duties.--The board shall review and comment on all  
20 commission proposed regulations, the interim guidelines under  
21 section 504(2) (relating to powers and duties of commission) and  
22 the interim criteria under section 504(5) developed to implement  
23 the provisions of this chapter. The commission shall have no  
24 power to promulgate regulations, interim guidelines or interim  
25 criteria under this chapter until receipt of written comments on  
26 the proposed regulations, guidelines or criteria from the board  
27 or until 60 days have expired from the date when the  
28 regulations, guidelines or criteria were submitted by the  
29 commission to the board for its comments. Existing regulations,  
30 guidelines and criteria shall continue until modified,



1 superseded or repealed by the commission.

2 (e) Term.--The term of office for each board member shall be  
3 three years except that the commission shall stagger the initial  
4 terms of the charter members such that five shall serve for one  
5 year, five shall serve for two years and six shall serve for  
6 three years. Board members may be appointed to successive terms  
7 at the discretion of the commission, provided that no member may  
8 serve more than two three-year terms.

9 § 511. Financial assistance.

10 (a) Loans, grants, etc.--The commission shall, to the extent  
11 funds are available, provide financial assistance in the form of  
12 loans, loan guarantees and grants for the implementation of  
13 nutrient management plans and of odor management plans for  
14 existing agricultural operations.

15 (b) Criteria for eligibility.--In reviewing applications for  
16 financial assistance, the commission shall consider the  
17 following:

18 (1) Whether the project will improve the health, safety  
19 or environment of the people of this Commonwealth and  
20 otherwise satisfy the purposes of this chapter.

21 (2) The cost-effectiveness of the proposed practices in  
22 comparison with other alternatives.

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

25 (c) Issuance and terms.--Subject to this section, the  
26 commission shall issue loans and set terms applicable thereto in  
27 any manner it deems appropriate. The commission may consider  
28 such factors as it deems relevant, including current market  
29 interest rates, the financial ability of the applicant to repay  
30 and the necessity to maintain the funds created hereunder in a

1 financially sound manner. Loans may be based on the ability to  
2 repay from future revenue to be derived from the applicant's  
3 agricultural operation, by a mortgage or other security  
4 interest, or by any other fiscal manner which the commission  
5 deems appropriate. The board shall have the power to defer  
6 principal on loans for up to 12 months. The minimum rate of  
7 interest to be paid on any loan made pursuant to this section  
8 shall be 1%.

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

10 (1) Where funds have been made available to the  
11 commission, subject to any conditions that may have  
12 accompanied the receipt of such funds.

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

18 (e) Grants and loans.--The commission shall, where it deems  
19 it appropriate and to the extent financial circumstances permit,  
20 mix grant funds with loan funds.

21 § 512. Nutrient Management Fund.

22 (a) Establishment of fund.--There is established a special  
23 nonlapsing fund in the State Treasury to be known as the  
24 Nutrient Management Fund. All fees, fines, judgments and  
25 interest collected by the commission under this chapter shall be  
26 paid into the fund. All money placed in the fund and the  
27 interest it accrues are hereby appropriated to the commission on  
28 a continuing basis for any activities necessary to meet the  
29 requirements of this chapter.

30 (b) Supplements to fund.--The Nutrient Management Fund may

1 be supplemented by moneys received from the following sources:

2 (1) State funds appropriated to the commission.

3 (2) Federal funds appropriated to the commission.

4 (3) Proceeds from the sale of any bonds made available  
5 to the commission.

6 (4) Repayment of loan principal.

7 (5) Payment on interest loans made by the commission.

8 (6) Gifts and other contributions from public and  
9 private sources.

10 (c) Fund administration.--The commission shall have  
11 authority to adopt procedures for the use of moneys in the fund,  
12 including the creation of accounts within the fund for the  
13 purposes of administering the loan and grant programs authorized  
14 by this chapter.

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

18 (e) Deposit and use of funds.--No administrative action  
19 shall prevent the deposit of moneys into the fund in the fiscal  
20 year in which they are received. The funds shall only be used  
21 for the purposes authorized by this chapter and shall not be  
22 transferred or diverted to any other purpose by administrative  
23 action.

24 § 513. Unlawful conduct.

25 It shall be unlawful to fail to comply with or to cause or  
26 assist in the violation of any order or any of the provisions of  
27 this chapter or the rules and regulations adopted under this  
28 chapter or to fail to comply with a nutrient management plan or  
29 an odor management plan.

30 § 514. Civil penalties and remedies.

1 (a) Civil penalty.--In addition to proceeding under any  
2 other remedy available at law or in equity for a violation of a  
3 provision of this chapter or a rule or regulation adopted, order  
4 issued or odor management plan or nutrient management plan  
5 approved under this chapter, the commission may assess a civil  
6 penalty of not more than \$500 for the first day of each offense  
7 and \$100 for each additional day of continuing violation. The  
8 factors for consideration in determining the amount of the  
9 penalty are:

- 10 (1) The gravity of the violation.
- 11 (2) The potential harm to the public.
- 12 (3) The potential effect on the environment.
- 13 (4) The willfulness of the violation.
- 14 (5) Previous violations.
- 15 (6) The economic benefit to the violator for failing to  
16 comply with this chapter.

17 Whenever the commission finds that a violation did not cause  
18 harm to human health or an adverse effect on the environment,  
19 the commission may issue a warning in lieu of assessing a  
20 penalty where the owner or operator, upon notice, takes  
21 immediate action to resolve the violation and come into  
22 compliance. If the commission finds the nutrient pollution or  
23 the danger of nutrient pollution or the negative impacts from  
24 odor associated with new or expanded facilities results from  
25 conditions, activities or practices which are being or have been  
26 implemented in accordance with a nutrient management plan or  
27 odor management plan developed and approved pursuant to and  
28 consistent with this chapter and the regulations developed under  
29 this chapter and which is being or has been fully implemented  
30 and maintained, the owner or operator of the agricultural

1 operation shall be exempt from the imposition of penalties under  
2 this chapter.

3 (b) Collection.--In cases of inability to collect the civil  
4 penalty or failure of any person to pay all or a portion of the  
5 penalty, the commission may refer the matter to the Office of  
6 General Counsel or the Office of Attorney General which shall  
7 institute an action in the appropriate court to recover the  
8 penalty. Any penalty assessed shall act as a lien on the  
9 property of the person against whom the penalty has been  
10 assessed.

11 (c) Civil remedies.--In addition to any other remedies  
12 provided for in this chapter, any violation of this chapter, the  
13 rules and regulations promulgated under this chapter or any  
14 order or nutrient management plan or odor management plan  
15 approved under this chapter shall be abatable in the manner  
16 provided by law or equity for the abatement of public nuisances.  
17 In addition, in order to restrain or prevent any violation of  
18 this chapter or the rules and regulations promulgated under this  
19 chapter or any order or nutrient management plan or odor  
20 management plan approved under this chapter, suits may be  
21 instituted in equity or at law in the name of the Commonwealth  
22 upon relation of the Attorney General, the General Counsel, the  
23 district attorney of any county, the solicitor of any  
24 municipality affected or the solicitor of any conservation  
25 district, provided that the General Counsel, district attorney  
26 or solicitor shall first serve notice upon the Attorney General  
27 of the intention to so proceed. These proceedings may be  
28 prosecuted in the Commonwealth Court or in the court of common  
29 pleas of the county where the activity has taken place, the  
30 condition exists or the public is affected, and, to that end,

1 jurisdiction is hereby conferred in law and equity upon these  
2 courts. Except in cases of emergency where, in the opinion of  
3 the court, the exigencies of the case require immediate  
4 abatement of the nuisance, the court may, in its decree, fix a  
5 reasonable time during which the person responsible for the  
6 nuisance may make provision for the abatement of same.

7 (d) Equitable relief.--In cases where the circumstances  
8 require it or the public health is endangered, a mandatory  
9 preliminary injunction, special injunction or temporary  
10 restraining order may be issued upon the terms prescribed by the  
11 court, provided that notice of the application has been given to  
12 the defendant in accordance with the rules of equity practice.  
13 In any such proceeding the Attorney General, the General  
14 Counsel, the district attorney or the solicitor of any  
15 municipality or conservation district shall not be required to  
16 give bond. In any such proceeding, the court shall issue a  
17 prohibitory or mandatory preliminary injunction if it finds that  
18 the defendant is engaging in unlawful conduct as defined by this  
19 chapter or is engaged in conduct which is causing immediate and  
20 irreparable harm to the public. In addition to an injunction,  
21 the court in such equity proceeding may assess civil penalties  
22 in accordance with this section.

23 § 515. Limitation of liability.

24 If a person is fully and properly implementing a nutrient  
25 management plan or an odor management plan approved by the local  
26 conservation district or the commission and maintained under  
27 this chapter for an agricultural operation, the implementation  
28 shall be given appropriate consideration as a mitigating factor  
29 in any civil action for penalties or damages alleged to have  
30 been caused by the management or utilization of nutrients or the

1 abatement of odor impacts pursuant to the implementation.

2 § 516. Enforcement authority; enforcement orders.

3 (a) Right of access.--A duly authorized agent of the  
4 commission or a conservation district shall have authority to  
5 enter any agricultural operation at reasonable times to conduct  
6 such investigations and to take such actions as are necessary to  
7 enforce the provisions of this chapter or any order, rule or  
8 regulation issued hereunder.

9 (b) Duty to grant access.--Any person owning or operating an  
10 agricultural operation shall grant access to any duly authorized  
11 agent of the commission or a conservation district pursuant to  
12 subsection (a) and shall not hinder, obstruct, prevent or  
13 interfere with such agents in the performance of their duties,  
14 provided, however, that agents shall perform such reasonable  
15 measures and actions as directed by the owner or operator of an  
16 agricultural operation as will reasonably and substantially  
17 prevent the spread or outbreak of contagious diseases.

18 (c) Orders.--The commission or any conservation district  
19 delegated enforcement authority may issue such orders as are  
20 necessary to aid in the enforcement of the provisions of this  
21 chapter. Any order issued under this section shall take effect  
22 upon notice unless the order specifies otherwise. An appeal of  
23 the order to the Environmental Hearing Board shall not act as a  
24 supersedeas, provided that upon application for and cause shown,  
25 the Hearing Board may issue such a supersedeas under the rules  
26 established by the Hearing Board.

27 § 517. Appealable actions.

28 Any person aggrieved by an order or other administrative  
29 action of the commission issued pursuant to this chapter shall  
30 have the right, within 30 days from actual or constructive

1 notice of the action, to appeal the action to the Environmental  
2 Hearing Board.

3 § 518. Powers reserved under existing laws.

4 Nothing in this chapter shall limit in any way whatever the  
5 powers conferred upon the commission, the department, the  
6 Department of Environmental Protection, or a conservation  
7 district under laws other than this chapter, including, but not  
8 limited to, the act of June 22, 1937 (P.L.1987, No.394), known  
9 as The Clean Streams Law, and the act of July 7, 1980 (P.L.380,  
10 No.97), known as the Solid Waste Management Act, and common law.  
11 All such powers are preserved and may be freely exercised. A  
12 court exercising general equitable jurisdiction shall not be  
13 deprived of such jurisdiction even though a nuisance or  
14 condition detrimental to health is subject to regulation or  
15 other action by the board under this chapter.

16 § 519. Preemption of local ordinances.

17 (a) General.--This chapter and its provisions are of  
18 Statewide concern and occupy the whole field of regulation  
19 regarding nutrient management and odor management, to the  
20 exclusion of all local regulations.

21 (b) Nutrient management.--No ordinance or regulation of any  
22 political subdivision or home rule municipality may prohibit or  
23 in any way regulate practices related to the storage, handling  
24 or land application of animal manure or nutrients or to the  
25 construction, location or operation of facilities used for  
26 storage of animal manure or nutrients or practices otherwise  
27 regulated by this chapter if the municipal ordinance or  
28 regulation is in conflict with this chapter and the regulations  
29 or guidelines promulgated under it.

30 (c) Odor management.--No ordinance or regulation of a



1 political subdivision or home rule municipality may regulate the  
2 management of odors generated from animal housing or manure  
3 management facilities regulated by this chapter if the municipal  
4 ordinance or regulation is in conflict with this chapter and the  
5 regulations or guidelines promulgated under it.

6 (d) Stricter requirements.--Nothing in this chapter shall  
7 prevent a political subdivision or home rule municipality from  
8 adopting and enforcing ordinances or regulations which are  
9 consistent with and no more stringent than the requirements of  
10 this chapter and the regulations or guidelines promulgated under  
11 this chapter. No penalty shall be assessed under any such local  
12 ordinance or regulation under this subsection for any violation  
13 for which a penalty has been assessed under this chapter.

14 § 520. Repeals.

15 All acts and parts of acts are repealed insofar as they are  
16 inconsistent with this chapter.

17 § 521. Other statutes not affected.

18 This chapter shall not be construed as modifying, rescinding  
19 or superseding any other statute, or as regulating biosolids,  
20 and shall be read in pari materia with other statutes. Nothing  
21 in this chapter shall limit in any way whatever the powers  
22 conferred upon the department, the Department of Environmental  
23 Protection and the State Conservation Commission under statutes  
24 other than this chapter. All such powers are preserved and may  
25 be freely exercised.

26 § 522. Regulations.

27 The Department of Environmental Protection is authorized to  
28 adopt such regulations as it deems necessary to its  
29 administration and enforcement of this chapter. This includes  
30 the authority to establish, by regulation, such fees as are

1 reasonably necessary to fund the implementation and enforcement  
2 of this chapter.

3 Section 2. (a) Except as set forth in subsection (b), the  
4 provisions of this act are severable. If any provision of this  
5 act or its application to any person or circumstance is held  
6 invalid, the invalidity shall not affect other provisions or  
7 applications of this act which can be given effect without the  
8 invalid provision or application.

9 (b) If any provision of the addition of 3 Pa.C.S. Ch. 3  
10 relating to the establishment, procedures or operation of the  
11 Office of Ordinance Review or the Agricultural Review Board or  
12 the application of such a provision to any person or  
13 circumstance is held invalid, the following provisions are void:

14 (1) The addition of 3 Pa.C.S. Ch. 5.

15 (2) Section 3 of this act.

16 Section 3. The act of May 20, 1993 (P.L.12, No.6), known as  
17 the Nutrient Management Act, is repealed.

18 Section 4. The addition of 3 Pa.C.S. Ch. 5 is a continuation  
19 of the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient  
20 Management Act. The following apply:

21 (1) Except as otherwise provided in 3 Pa.C.S. Ch. 5, all  
22 activities initiated under the Nutrient Management Act shall  
23 continue and remain in full force and effect and may be  
24 completed under 3 Pa.C.S. Ch. 5. Orders, regulations, rules  
25 and decisions which were made under the Nutrient Management  
26 Act and which are in effect on the effective date of section  
27 3 of this act shall remain in full force and effect until  
28 revoked, vacated or modified under 3 Pa.C.S. Ch. 5. Contracts  
29 and obligations entered into under the Nutrient Management  
30 Act are not affected nor impaired by the repeal of the

1 Nutrient Management Act.

2 (2) Except as set forth in paragraph (3), any difference  
3 in language between 3 Pa.C.S. Ch. 5 and the Nutrient  
4 Management Act is intended only to conform to the style of  
5 the Pennsylvania Consolidated Statutes and is not intended to  
6 change or affect the legislative intent, judicial  
7 construction or administration and implementation of the  
8 Nutrient Management Act.

9 (3) Paragraph (2) does not apply to the addition of any  
10 of the following provisions of 3 Pa.C.S.:

11 (i) Section 501.

12 (ii) Section 502(5).

13 (iii) The definitions of "animal housing facility,"  
14 "concentrated animal feeding operation," "manure  
15 management facility" and "odor management plan" in  
16 section 503.

17 (iv) Section 504(1.1) and (2).

18 (v) Section 506.

19 (vi) Section 507.

20 (vii) Section 508.

21 (viii) Section 509.

22 (ix) Section 510(a), (d) and (e).

23 (x) Section 511(a).

24 (xi) Section 513.

25 (xii) Section 514(a), (c) and (d).

26 (xiii) Section 515.

27 (xiv) Section 519.

28 (xv) Section 521.

29 (xvi) Section 522.

30 (4) The addition of 3 Pa.C.S. Ch. 5 does not affect the

1 terms of office of the members of the Nutrient Management  
2 Advisory Board in office on the effective date of this  
3 paragraph.

4 Section 5. This act shall take effect as follows:

5 (1) The addition of 3 Pa.C.S. § 507 shall take effect in  
6 180 days.

7 (2) The addition of 3 Pa.C.S. § 519(c) shall take effect  
8 on the earlier of:

9 (i) the effective date of regulations promulgated  
10 under 3 Pa.C.S. § 504(1.1); or

11 (ii) the publication in the Pennsylvania Bulletin of  
12 interim guidelines under 3 Pa.C.S. § 504(2).

13 (3) The remainder of this act shall take effect  
14 immediately.