

**HOUSE BILL 124**  
**EMERGENCY BILL**

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M3

2002 Regular Session  
2lr0666

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By: **Delegates Hubbard and Billings**

Introduced and read first time: January 14, 2002

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Nutrient Management Plans - Transfer to the Department of the**  
3                                   **Environment and Extension of Deadlines**

4 FOR the purpose of transferring certain functions, duties, and powers related to  
5 certain nutrient management plans from the Department of Agriculture to the  
6 Department of the Environment, and requiring completion of the transfer by a  
7 certain date; requiring the Department of the Environment to grant certain  
8 waivers and to extend certain deadlines under certain circumstances; requiring  
9 the formulation of, and compliance with, certain nutrient management plans by  
10 certain times; specifying that certain penalties are not applicable to certain  
11 persons; providing that the Department of the Environment and its Secretary  
12 are the successors of the Department of Agriculture and its Secretary for certain  
13 purposes; providing for the continuity of certain laws, regulations, contracts,  
14 and transactions; making provisions of this Act severable; requiring the  
15 publisher of the Annotated Code of Maryland to make certain corrections  
16 necessitated by this Act; providing for the effective date of certain provisions of  
17 this Act; providing for the termination of certain provisions of this Act; making  
18 this Act an emergency measure; making certain technical corrections; and  
19 generally relating to the transfer of certain nutrient management plans to the  
20 Department of the Environment.

21 BY transferring

22 Article - Agriculture

23 Section 8-801, 8-801.1, 8-802 through 8-803.5, and 8-804 through 8-807,  
24 respectively, and the subtitle "Subtitle 8. Nutrient Management"

25 Annotated Code of Maryland

26 (1999 Replacement Volume and 2001 Supplement)

27 to be

28 Article - Environment

29 Section 4-1A-01 through 4-1A-13, respectively, and the subtitle "Subtitle 1A.  
30 Nutrient Management"

31 Annotated Code of Maryland

32 (1996 Replacement Volume and 2001 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - Environment  
3 Section 4-1A-04(a), (c), and (f), 4-1A-05(c), (d)(2), and (h) through (j),  
4 4-1A-06(a), 4-1A-07(c)(1), 4-1A-08(a), 4-1A-10(a)(2)(ii) and (b), and  
5 4-1A-13  
6 Annotated Code of Maryland  
7 (1996 Replacement Volume and 2001 Supplement)  
8 (As enacted by Section 1 of this Act)

9 BY repealing and reenacting, without amendments,  
10 Article - Environment  
11 Section 4-1A-05(e) and (f)  
12 Annotated Code of Maryland  
13 (1996 Replacement Volume and 2001 Supplement)  
14 (As enacted by Section 1 of this Act)

15 BY repealing  
16 Article - Environment  
17 Section 4-1A-05(g)  
18 Annotated Code of Maryland  
19 (1996 Replacement Volume and 2001 Supplement)  
20 (As enacted by Section 1 of this Act)

21 BY adding to  
22 Article - Environment  
23 Section 4-1A-05(g)  
24 Annotated Code of Maryland  
25 (1996 Replacement Volume and 2001 Supplement)  
26 (As enacted by Section 1 of this Act)

27 BY repealing and reenacting, with amendments,  
28 Article - Environment  
29 Section 4-1A-05(c) and 4-1A-10(a)(2)(ii)  
30 Annotated Code of Maryland  
31 (1996 Replacement Volume and 2001 Supplement)  
32 (As enacted by Sections 1 and 2 of this Act)

33 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
34 MARYLAND, That Section(s) 8-801, 8-801.1, 8-802 through 8-803.5, and 8-804  
35 through 8-807, respectively, and the subtitle "Subtitle 8. Nutrient Management" of  
36 Article - Agriculture of the Annotated Code of Maryland be transferred to be  
37 Section(s) 4-1A-01 through 4-1A-13, respectively, and the subtitle "Subtitle 1A.  
38 Nutrient Management" of Article - Environment of the Annotated Code of Maryland.

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
2 read as follows:

3 **Article - Environment**

4 4-1A-04.

5 (a) To apply for certification as a nutrient management consultant, an  
6 applicant shall:

7 (1) Submit to the Department an application on the form the  
8 Department requires; and

9 (2) Pay to the Department the certification fee stated in [§ 8-806] §  
10 4-1A-12 of this subtitle.

11 (c) To apply for a license an applicant shall:

12 (1) Submit to the Department an application on the form the  
13 Department requires; and

14 (2) Pay to the Department the applicable license fee stated in [§ 8-806]  
15 § 4-1A-12 of this subtitle.

16 (f) The Department shall renew the certificate or license of any applicant for  
17 an additional 1-year term if the applicant:

18 (1) Submits a renewal application on the form that the Department  
19 requires;

20 (2) Pays to the Department the applicable fee stated in [§ 8-806] §  
21 4-1A-12 of this subtitle;

22 (3) Complies with applicable continuing education requirements;

23 (4) Complies with applicable record keeping and reporting requirements;  
24 and

25 (5) Otherwise is entitled to be certified or licensed.

26 4-1A-05.

27 (c) The Governor shall provide sufficient funding in each fiscal year's budget  
28 to:

29 (1) Assist in the development of nutrient management plans;

30 (2) Meet the technical assistance and evaluation requirements of this  
31 section;

1           (3)     Meet the State's requirements for the implementation of the Manure  
2 Transportation Pilot Project under § 8-704.2 of [this title] THE AGRICULTURE  
3 ARTICLE; and

4           (4)     Provide State assistance under the Maryland Agricultural Water  
5 Quality Cost Share Program in the Department OF AGRICULTURE.

6     (d)     (2)     The Secretary [of Agriculture] shall adopt regulations authorizing  
7 the disbursement of State cost sharing funds under this subsection.

8     (e)     (1)     By December 31, 2001, a person who, in operating a farm, uses  
9 chemical fertilizer, shall have a nutrient management plan for nitrogen and  
10 phosphorus that meets the requirements of this subtitle.

11           (2)     (i)     By December 31, 2001, a person who, in operating a farm, uses  
12 sludge or animal manure, shall have a nutrient management plan for nitrogen.

13                   (ii)     By July 1, 2004, a person who, in operating a farm, uses sludge  
14 or animal manure, shall have a nutrient management plan for nitrogen and  
15 phosphorus.

16     (f)     (1)     By December 31, 2002, a person who, in operating a farm, uses  
17 chemical fertilizer, shall comply with a nutrient management plan for nitrogen and  
18 phosphorus that meets the requirements of this subtitle.

19           (2)     (i)     By December 31, 2002, a person who, in operating a farm, uses  
20 sludge or animal manure, shall comply with a nutrient management plan for nitrogen  
21 that meets the requirements of this subtitle.

22                   (ii)     By July 1, 2005, a person who, in operating a farm, uses sludge  
23 or animal manure, shall comply with a nutrient management plan for nitrogen and  
24 phosphorus that meets the requirements of this subtitle.

25     [(g)     A person may meet the requirements of subsection (e) of this section by  
26 requesting, at least 60 days before the applicable date set forth in subsection (e) of  
27 this section, the development of a nutrient management plan by a certified nutrient  
28 management consultant.]

29     (G)     (1)     THE DEPARTMENT SHALL WAIVE, ON A TEMPORARY BASIS, THE  
30 DEADLINES REQUIRED UNDER SUBSECTIONS (E)(1) AND (2)(I) AND (F)(1) AND (2)(I) OF  
31 THIS SECTION IF A PERSON IS ABLE TO DEMONSTRATE:

32                   (I)     A GOOD FAITH EFFORT TO FORMULATE A NUTRIENT  
33 MANAGEMENT PLAN, WITH THE ASSISTANCE OF THE STATE DEPARTMENT OF  
34 AGRICULTURE, BY DECEMBER 31, 2001; AND

35                   (II)     THAT THE PERSON'S DELAY IN FORMULATION OF A PLAN WAS  
36 SUBSTANTIALLY CAUSED BY THE UNAVAILABILITY OF A CERTIFIED NUTRIENT  
37 MANAGEMENT CONSULTANT OR BY A MATERIAL DELAY OF THE STATE DEPARTMENT  
38 OF AGRICULTURE.

1 (2) IF A PERSON RECEIVES A WAIVER UNDER PARAGRAPH (1) OF THIS  
2 SUBSECTION, THE DEPARTMENT SHALL EXTEND THE PERSON'S PLAN DEADLINES AS  
3 FOLLOWS:

4 (I) WITHIN 3 MONTHS OF THE ISSUANCE OF THE WAIVER, THE  
5 PERSON SHALL CONTRACT WITH A CERTIFIED NUTRIENT MANAGEMENT  
6 CONSULTANT FOR THE FORMULATION OF AN APPROPRIATE NUTRIENT  
7 MANAGEMENT PLAN; AND

8 (II) WITHIN 9 MONTHS OF THE DATE OF THE CONTRACT, THE  
9 CONSULTANT SHALL FORMULATE A PLAN THAT MEETS THE REQUIREMENTS OF THIS  
10 SUBTITLE.

11 (3) WITHIN 2 YEARS OF THE FORMULATION OF A NUTRIENT  
12 MANAGEMENT PLAN UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION, THE PERSON  
13 SHALL COMPLY WITH THE PLAN.

14 (h) (1) THE PROVISIONS OF THIS SUBSECTION MAY NOT APPLY TO A  
15 PERSON WHO, UNDER SUBSECTION (G) OF THIS SECTION, HAS:

16 (I) RECEIVED A WAIVER; OR

17 (II) APPLIED FOR A WAIVER DURING THE PERIOD WHEN THE  
18 APPLICATION IS PENDING.

19 (2) If a person violates the provisions of subsection (e) of this section, the  
20 Department shall notify the person that the person is in violation of the requirement  
21 to have a nutrient management plan.

22 [(2)] (3) After a reasonable period of time, if the person fails to have a  
23 nutrient management plan, the person is subject to an administrative penalty not to  
24 exceed \$250.

25 (i) (1) THE PROVISIONS OF THIS SUBSECTION MAY NOT APPLY TO A  
26 PERSON WHO, UNDER SUBSECTION (G) OF THIS SECTION, HAS:

27 (I) RECEIVED A WAIVER; OR

28 (II) APPLIED FOR A WAIVER DURING THE PERIOD WHEN THE  
29 APPLICATION IS PENDING.

30 (2) A person who violates any provision of subsection (f) of this section or  
31 of any rule, regulation, or order adopted or issued under this section is subject to:

32 (i) For a first violation, a warning; and

33 (ii) For a second or subsequent violation, after an opportunity for a  
34 hearing which may be waived in writing by the person accused of a violation, an  
35 administrative penalty that may be imposed by the Department [of Agriculture].

1                    [(2)]    (3)    The penalty imposed on a person under paragraph [(1)(ii)]  
2 (2)(II) of this subsection shall be:

3                    (i)    Up to \$100 for each violation, but not exceeding \$2,000 per  
4 farmer or operator per year; and

5                    (ii)    Assessed with consideration given to:

6                                    1.    The willfulness of the violation, the extent to which the  
7 existence of the violation was known to but uncorrected by the violator, and the extent  
8 to which the violator exercised reasonable care;

9                                    2.    Any actual harm to the environment or to human health;

10                                  3.    The available technology and economic reasonableness of  
11 controlling, reducing, or eliminating the violation; and

12                                  4.    The extent to which the current violation is part of a  
13 recurrent pattern of the same or similar type of violation committed by the violator.

14                    [(3)]    (4)    (i)    Except as provided in subparagraph (ii) of this paragraph,  
15 each day a violation occurs is a separate violation under this subsection.

16                                  (ii)    Daily penalties do not continue to accrue as long as the farmer  
17 takes reasonable steps to correct the violation.

18                    [(4)]    (5)    Any penalty imposed under this subsection is payable to the  
19 Maryland Agricultural Water Quality Cost Share Program within the Department OF  
20 AGRICULTURE.

21                    (j)    If a person violates any provision of this section, the Department, IN  
22 CONJUNCTION WITH THE DEPARTMENT OF AGRICULTURE AND UNDER THE  
23 AUTHORITY OF TITLE 8, SUBTITLE 7 OF THE AGRICULTURE ARTICLE, may:

24                    (1)    Require repayment of cost share funds [under Subtitle 7 of this title]  
25 for the project that is in violation; or

26                    (2)    Deny or restrict future cost share payments [under Subtitle 7 of this  
27 title].

28 4-1A-06.

29                    (a)    A person who applies nutrients for hire to land used for agricultural  
30 purposes shall be a certified nutrient management consultant or work under a  
31 nutrient management consultant certified under [§ 8-803] § 4-1A-04 of this subtitle.

32 4-1A-07.

33                    (c)    (1)    The Secretary, in consultation with the Nutrient Management  
34 Advisory Committee under [§ 8-804] § 4-1A-10 of this subtitle, shall create or  
35 approve educational programs under this section.

1 4-1A-08.

2 (a) This section applies to an application of commercial fertilizer, as defined in  
3 § 6-201 of [this article] THE AGRICULTURE ARTICLE:

4 (1) That is performed by:

5 (i) A person who applies commercial fertilizer for hire; or

6 (ii) An employee of the owner or manager of the property; and

7 (2) To:

8 (i) Ten acres or more annually, whether one or multiple parcels, of  
9 property that is not used for agricultural purposes; or

10 (ii) State property that is not used for agricultural purposes.

11 4-1A-10.

12 (a) (2) (ii) The report required under subparagraph (i) of this paragraph  
13 shall include information regarding:

14 1. The level of participation in the nutrient management  
15 plan program;

16 2. Additional resources that may be needed to meet the  
17 requirements of [§ 8-803.1] § 4-1A-05 of this subtitle;

18 3. The effectiveness of nutrient application education  
19 programs; and

20 4. The effectiveness of the Manure Transportation Pilot  
21 Project set forth in § 8-704.2 of [this title] THE AGRICULTURE ARTICLE and the  
22 potential economic impact on farmers if the Pilot Project is terminated.

23 (b) In consultation with the Nutrient Management Advisory Committee, the  
24 Department shall by regulation:

25 (1) Prescribe the criteria, form, and content for certified nutrient  
26 management plans applicable to licensees and certificate holders;

27 (2) Establish continuing education requirements for certified nutrient  
28 management consultants and persons receiving vouchers of completion under [§  
29 8-803.3] § 4-1A-07 of this subtitle; AND

30 (3) Adopt guidelines and requirements for licensees and certified  
31 nutrient management consultants on record keeping and on reporting requirements  
32 to the Department on nutrient management plans.

1 4-1A-13.

2 On or before December 31 of each year, the Department [of Agriculture] shall  
3 report to the Governor, and, in accordance with § 2-1246 of the State Government  
4 Article, the General Assembly, on the farm acreage covered by nutrient management  
5 plans and the implementation and evaluation of those plans.

6 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
7 read as follows:

8 **Article - Environment**

9 4-1A-05.

10 (c) The Governor shall provide sufficient funding in each fiscal year's budget  
11 to:

12 (1) Assist in the development of nutrient management plans;

13 (2) Meet the technical assistance and evaluation requirements of this  
14 section; AND

15 (3) [Meet the State's requirements for the implementation of the  
16 Manure Transportation Pilot Project under § 8-704.2 of the Agriculture Article; and

17 (4)] Provide State assistance under the Maryland Agricultural Water  
18 Quality Cost Share Program in the Department of Agriculture.

19 4-1A-10.

20 (a) (2) (ii) The report required under subparagraph (i) of this paragraph  
21 shall include information regarding:

22 1. The level of participation in the nutrient management  
23 plan program;

24 2. Additional resources that may be needed to meet the  
25 requirements of § 4-1A-05 of this subtitle; AND

26 3. The effectiveness of nutrient application education  
27 programs; and

28 4. The effectiveness of the Manure Transportation Pilot  
29 Project set forth in § 8-704.2 of the Agriculture Article and the potential economic  
30 impact on farmers if the Pilot Project is terminated].

31 SECTION 4. AND BE IT FURTHER ENACTED, That all functions, powers,  
32 duties, equipment, records, assets, and liabilities related to the formulation of, and  
33 compliance with, nutrient management plans under Title 8, Subtitle 8 of the  
34 Agriculture Article, and all personnel assigned to these functions, powers, and duties

1 in the Department of Agriculture, be, and they are hereby transferred to the  
2 Department of the Environment under Title 4, Subtitle 1A of the Environment  
3 Article. This transfer shall begin immediately upon the effective date of this Act and  
4 shall be complete by December 31, 2002. During this transition, the Department of  
5 the Environment shall liberally construe the provisions of § 4-1A-05(g) of the  
6 Environment Article, as enacted by Section 2 of this Act, in favor of farmers who  
7 demonstrate good faith efforts to comply with the requirements of the law during the  
8 time that nutrient management plans were administered by the Department of  
9 Agriculture.

10 SECTION 5. AND BE IT FURTHER ENACTED, That every person who is  
11 employed by the Department of Agriculture in a nutrient management function in a  
12 position authorized by the State budget is hereby transferred to the Department of  
13 the Environment on or before December 31, 2002, without any change or loss of  
14 rights, benefits, or employment and retirement status, except as otherwise  
15 specifically provided in this Act.

16 SECTION 6. AND BE IT FURTHER ENACTED, That with respect to functions,  
17 powers, and duties transferred by this Act, the Department of the Environment is the  
18 successor of the Department of Agriculture, and the Secretary of the Environment is  
19 the successor of the Secretary of Agriculture. In every law, executive order, regulation,  
20 policy, rule, or document created by any department, official, employee, or unit of this  
21 State, the names and titles of that department, official, employee, or unit mean the  
22 name and term of the successor department, official, employee, or unit for purposes of  
23 nutrient management plans, as provided in this Act.

24 SECTION 7. AND BE IT FURTHER ENACTED, That the following funds are  
25 transferred from the Department of Agriculture to the Department of the  
26 Environment on or before December 31, 2002:

27 (1) all funds associated with the formulation of, or compliance with,  
28 nutrient management plans that have been paid into the Maryland Agricultural  
29 Water Quality Cost Share Program within the Department of Agriculture;

30 (2) all funds received by the State under the Conservation Reserve  
31 Enhancement Program of the U.S. Department of Agriculture; and

32 (3) all other State and federal funds received or to be received by the  
33 Department of Agriculture that are related to the formulation of, or compliance with,  
34 nutrient management plans.

35 SECTION 8. AND BE IT FURTHER ENACTED, That, except as otherwise  
36 provided in this Act, nothing in this Act affects the term of office of an appointed  
37 member of any board, commission, committee, or other agency or unit. A person who  
38 is a member of such a unit on the effective date of this Act shall remain a member for  
39 the balance of the term to which the member was appointed, unless the member  
40 sooner dies, resigns, or is removed pursuant to the provisions of law.

41 SECTION 9. AND BE IT FURTHER ENACTED, That, except as expressly  
42 provided to the contrary in this Act, any transaction affected by or flowing from any

1 statute here amended, repealed, or transferred, and validly entered into before the  
2 effective date of this Act and every right, duty, or interest following from it remains  
3 valid after the effective date of this Act and may be terminated, completed,  
4 consummated, or enforced pursuant to law. .

5 SECTION 10. AND BE IT FURTHER ENACTED, That, except as otherwise  
6 provided in this Act, all permits and licenses, applications for permits and licenses,  
7 regulations, proposed regulations, standards and guidelines, proposed standards and  
8 guidelines, orders and other directives, forms, plans, memberships, special funds,  
9 appropriations, grants, applications for grants, contracts, properties, investigations,  
10 administrative and judicial proceedings, rights to sue and be sued, and all other  
11 duties and responsibilities associated with those functions transferred by this Act  
12 shall continue in effect under the Department of the Environment or the appropriate  
13 board, commission, or other unit within the Department of the Environment, until  
14 completed, withdrawn, cancelled, modified, or otherwise changed pursuant to law.

15 SECTION 11. AND BE IT FURTHER ENACTED, That pursuant to the plan of  
16 reorganization proposed by this Act, in coordination with the Executive Director of  
17 Legislative Services, the publishers of the Annotated Code of Maryland are hereby  
18 directed to correct any cross-references, agency names, and titles that are rendered  
19 incorrect by this Act, in accordance with this section.

20 SECTION 12. AND BE IT FURTHER ENACTED, That all laws or parts of laws,  
21 public general or public local, or regulations, inconsistent with this Act, are repealed  
22 to the extent of the inconsistency.

23 SECTION 13. AND BE IT FURTHER ENACTED, That if any provision of this  
24 Act or the application thereof to any person or circumstance is held invalid for any  
25 reason in a court of competent jurisdiction, the invalidity does not affect other  
26 provisions or any other application of this Act which can be given effect without the  
27 invalid provision or application, and for this purpose the provisions of this Act are  
28 declared severable.

29 SECTION 14. AND BE IT FURTHER ENACTED, That Section 3 of this Act  
30 shall take effect on the taking effect of the termination provision specified in Section  
31 7 of Chapters 324 and 325 of the Acts of the General Assembly of 1998. If that  
32 termination provision does not become effective, Section 3 of this Act shall be null and  
33 void without the necessity of further action by the General Assembly. This Act may  
34 not be interpreted to have any effect on that termination provision.

35 SECTION 15. AND BE IT FURTHER ENACTED, That, subject to the  
36 provisions of Section 14 of this Act, this Act is an emergency measure, is necessary for  
37 the immediate preservation of the public health or safety, has been passed by a yea  
38 and nay vote supported by three-fifths of all the members elected to each of the two  
39 Houses of the General Assembly, and shall take effect from the date it is enacted.