
By: **Eastern Shore Delegation, Southern Maryland Delegation, Western Maryland Delegation, and Harford County Delegation**

Introduced and read first time: February 8, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture - Water Quality Improvement Act - Nutrient Management**

3 FOR the purpose of establishing two classes of certified nutrient management
4 consultants; establishing the requirements for each class of certification;
5 requiring the University of Maryland Cooperative Extension Service, in
6 consultation with the Department of Agriculture, to develop and conduct certain
7 training and examinations; removing the requirement that a certain property
8 owner or operator grant the Department of Agriculture right of entry under
9 certain circumstances; providing for approval, without Department review, of a
10 nutrient management plan prepared by a certified management consultant;
11 increasing the minimum gross income requirement of the applicability
12 provision; extending the deadlines for implementation of certain nutrient
13 management plans to certain dates; requiring the Department to adopt certain
14 regulations; and generally relating to nutrient management plans.

15 BY repealing and reenacting, with amendments,
16 Article - Agriculture
17 Section 8-801, 8-801.1(b)(1) and (2), 8-802, 8-803, and 8-803.1(b) and (e)
18 through (k)
19 Annotated Code of Maryland
20 (1999 Replacement Volume and 2001 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Agriculture**

24 8-801.

25 (a) In this subtitle the following words have the meanings indicated.

26 (b) (1) "Certified nutrient management consultant" means [an individual
27 certified by the Department to prepare a nutrient management plan] A CLASS 1 OR
28 CLASS 2 CERTIFIED MANAGEMENT CONSULTANT.

1 (2) "CLASS 1 CERTIFIED NUTRIENT MANAGEMENT CONSULTANT"
2 MEANS AN INDIVIDUAL WHO IS CERTIFIED BY THE DEPARTMENT TO PREPARE A
3 NUTRIENT MANAGEMENT PLAN FOR ANY FARM AFFECTED BY THIS SUBTITLE.

4 (3) "CLASS 2 CERTIFIED NUTRIENT MANAGEMENT CONSULTANT"
5 MEANS A FARMER WHO IS CERTIFIED BY THE DEPARTMENT TO PREPARE A
6 NUTRIENT MANAGEMENT PLAN FOR ONLY THE FARMER'S SPECIFIC FARMING
7 OPERATION.

8 (c) "Nutrient management plan" means a plan prepared under this subtitle by
9 a certified nutrient management consultant to manage the amount, placement,
10 timing, and application of animal waste, commercial fertilizer, sludge, or other plant
11 nutrients to prevent pollution by transport of bioavailable nutrients and to maintain
12 productivity.

13 8-801.1.

14 (b) (1) Each nutrient management plan shall be filed with the Department:

15 (i) When it is developed; and

16 (ii) Each time it is updated.

17 [(2) Submission of the plan shall include a grant by the property owner or
18 operator to the Department of a right of entry on the property to evaluate compliance
19 with the plan as long as the Department:

20 (i) Enters the property in daylight hours at a reasonable time that
21 allows the property owner or operator the opportunity to be present; and

22 (ii) Conducts its evaluation in a manner that minimizes any
23 inconvenience to the farmer.]

24 (2) A PLAN PREPARED BY A CERTIFIED MANAGEMENT CONSULTANT
25 SHALL BE DEEMED APPROVED AND SHALL BE ACCEPTED BY THE DEPARTMENT
26 WITHOUT ANY REVIEW BY THE DEPARTMENT.

27 8-802.

28 (a) A person may not prepare a nutrient management plan, for purposes of
29 meeting the requirements of this subtitle, unless the person is certified or licensed by
30 the State.

31 (b) An individual may apply to the Department for certification as [a] EITHER
32 A CLASS 1 OR CLASS 2 certified nutrient management consultant.

33 (c) A person engaged in the business of providing a nutrient management plan
34 provided under this subtitle shall hold an annual license from the Department.

35 (d) The Department may impose a penalty not exceeding \$250 for a violation
36 of the provisions of this section.

1 8-803.

2 (a) To apply for certification as a CLASS 1 nutrient management consultant, an
3 applicant shall:

4 (1) Submit to the Department an application on the form the
5 Department requires; and

6 (2) Pay to the Department the certification fee stated in § 8-806 of this
7 subtitle.

8 (b) The Department shall certify any individual AS A CLASS 1 NUTRIENT
9 MANAGEMENT CONSULTANT who:

10 (1) Meets the requirements of this subtitle;

11 (2) Meets the Department's educational requirements, including a
12 program on the proper application of nutrients;

13 (3) Passes a Department approved examination; and

14 (4) (i) Is employed by a person licensed under this subtitle; or

15 (ii) Holds a license as required by this subtitle.

16 (c) THE DEPARTMENT SHALL ADOPT REGULATIONS PROVIDING FOR A
17 CERTIFICATION PROCESS THAT ALLOWS A FARMER SUBJECT TO THIS SUBTITLE TO
18 BE CERTIFIED AS A CLASS 2 NUTRIENT MANAGEMENT CONSULTANT.

19 (D) THE CLASS 2 CERTIFICATION PROCESS SHALL FOCUS ON THE INDIVIDUAL
20 FARMER'S SPECIFIC TYPE OF OPERATION AND SHALL CONSIST OF:

21 (1) ONE OR MORE TRAINING SESSIONS; AND

22 (2) A WRITTEN EXAMINATION.

23 (E) THE UNIVERSITY OF MARYLAND COOPERATIVE EXTENSION SERVICE, IN
24 CONSULTATION WITH THE DEPARTMENT, SHALL DEVELOP AND CONDUCT THE
25 TRAINING SESSIONS AND WRITTEN EXAMINATIONS.

26 (F) To apply for a license an applicant shall:

27 (1) Submit to the Department an application on the form the
28 Department requires; and

29 (2) Pay to the Department the applicable license fee stated in § 8-806 of
30 this subtitle.

31 [(d)] (G) The Department shall license a person who meets the requirements
32 of this subtitle.

1 [(e)] (H) A certificate or license is issued for 1 year unless the certificate or
2 license is renewed as provided by this subtitle.

3 [(f)] (I) The Department shall renew the certificate or license of any
4 applicant for an additional 1-year term if the applicant:

5 (1) Submits a renewal application on the form that the Department
6 requires;

7 (2) Pays to the Department the applicable fee stated in § 8-806 of this
8 subtitle;

9 (3) Complies with applicable continuing education requirements;

10 (4) Complies with applicable record keeping and reporting requirements;
11 and

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

13 8-803.1.

14 (b) This section does not apply to:

15 (1) An agricultural operation with less than [\$2,500] \$10,000 in gross
16 income or

17 (2) A livestock operation with less than eight animal units as defined in
18 .40 C.F.R., Part 122, Appendix B.

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

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

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

27 (f) A PERSON WHO HAS A NUTRIENT MANAGEMENT PLAN OF THE TYPE
28 REQUIRED BY SUBSECTION (E)(1) OR (2)(I) OF THIS SECTION BY OCTOBER 1, 2002
29 SHALL COMPLY WITH THE PLAN BY DECEMBER 31, 2002.

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

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

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

4 (H) A PERSON WHO DOES NOT HAVE A NUTRIENT MANAGEMENT PLAN BY
5 OCTOBER 1, 2002, SHALL IMPLEMENT THE PLAN AS FOLLOWS:

6 (1) A PERSON WHO, IN OPERATING A FARM, USES CHEMICAL
7 FERTILIZER, SHALL COMPLY WITH A NUTRIENT MANAGEMENT PLAN FOR NITROGEN
8 AND PHOSPHORUS THAT MEETS THE REQUIREMENTS OF THIS SUBTITLE BY THE
9 EARLIER OF:

10 (I) DECEMBER 31, 2004; OR

11 (II) WITHIN 1 YEAR AFTER HAVING A NUTRIENT MANAGEMENT
12 PLAN.

13 (2) (I) A PERSON WHO, IN OPERATING A FARM, USES SLUDGE OR
14 ANIMAL MANURE, SHALL COMPLY WITH A NUTRIENT MANAGEMENT PLAN FOR
15 NITROGEN THAT MEETS THE REQUIREMENTS OF THIS SUBTITLE BY THE EARLIER
16 OF:

17 1. DECEMBER 31, 2004; OR

18 2. WITHIN 1 YEAR AFTER HAVING A NUTRIENT
19 MANAGEMENT PLAN.

20 (II) A PERSON WHO, IN OPERATING A FARM, USES SLUDGE OR
21 ANIMAL MANURE, SHALL COMPLY WITH A NUTRIENT MANAGEMENT PLAN FOR
22 NITROGEN AND PHOSPHORUS THAT MEETS THE REQUIREMENTS OF THIS SUBTITLE
23 BY THE EARLIER OF:

24 1. JULY 1, 2007; OR

25 2. WITHIN 1 YEAR AFTER HAVING A NUTRIENT
26 MANAGEMENT PLAN.

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

31 [(h)] (J) (1) If a person violates the provisions of subsection (e) of this
32 section, the Department shall notify the person that the person is in violation of the
33 requirement to have a nutrient management plan.

34 (2) After a reasonable period of time, if the person fails to have a
35 nutrient management plan, the person is subject to an administrative penalty not to
36 exceed \$250.

1 [(i)] (K) (1) A person who violates any provision of subsection (f) OR (G) of
2 this section or of any rule, regulation, or order adopted or issued under this section is
3 subject to:

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

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

8 (2) The penalty imposed on a person under paragraph (1)(ii) of this
9 subsection shall be:

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

12 (ii) Assessed with consideration given to:

13 1. The willfulness of the violation, the extent to which the
14 existence of the violation was known to but uncorrected by the violator, and the extent
15 to which the violator exercised reasonable care;

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

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

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

21 (3) (i) Except as provided in subparagraph (ii) of this paragraph, each
22 day a violation occurs is a separate violation under this subsection.

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

25 (4) Any penalty imposed under this subsection is payable to the
26 Maryland Agricultural Water Quality Cost Share Program within the Department.

27 [(j)] (L) If a person violates any provision of this section, the Department
28 may:

29 (1) Require repayment of cost share funds under Subtitle 7 of this title
30 for the project that is in violation; or

31 (2) Deny or restrict future cost share payments under Subtitle 7 of this
32 title.

33 [(k)] (M) The Department shall determine compliance with the provisions of
34 this section.

SECTION 2. AND BE IT FURTHER ENACTED, That:

By December 31, 2002, the Department of Agriculture shall adopt regulations that:

(1) Grant all farmers equal access to all computer software programs used by certified nutrient management planners;

(2) Authorize certified nutrient management planners to choose from a number of accepted software programs, including the Purdue University system, to assist in the writing of plans;

(3) Allow a farmer to identify the farmer's property using either the farmer's Property Tax ID, which shall be obtained by the Department at the request of the farmer, or Farm Service Agency ID number;

(4) Require annual plans to be submitted by March 1 of each year, unless a farmer applies for a different date;

(5) Alter the planning process to make certain that crop yield-capping does not occur and that farmers can plan to improve their yields as management techniques and technology change;

(6) Require a farmer to maintain and keep records at the farmer's farm, including documentation noting alterations to a plan due to weather, change in operational size, or circumstances beyond the control of the farmer; and

(7) Require a farmer to report the alterations described in item (6) of this section to the Department along with the farmer's annual nutrient management plan.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2002.