
By: **Eastern Shore Delegation, Southern Maryland Delegation, Western Maryland Delegation, and ~~Harford County Delegation~~ Harford County Delegation, and Delegates Billings, Frush, Hubbard, Hurson, Klausmeier, and Redmer**

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Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 23, 2002

CHAPTER _____

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; altering the Department of Agriculture's authority to enter onto~~
15 ~~private property; deleting certain penalties; requiring certain agricultural~~
16 ~~operations with a gross income between certain amounts to comply with a~~
17 ~~certain plan or certain recommendations; providing certain exceptions to certain~~
18 ~~penalties; requiring the Department to adopt certain regulations and procedures~~
19 ~~to streamline the Nutrient Management Program; and generally relating to~~
20 ~~nutrient management plans.~~

21 BY repealing and reenacting, with amendments,
22 Article - Agriculture
23 Section ~~8-801~~, 8-801.1(b)(1) and (2), ~~8-802~~, 8-803, and 8-803.1(b) and (e)
24 through (k)

1 Annotated Code of Maryland
2 (1999 Replacement Volume and 2001 Supplement)

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

5 **Article - Agriculture**

6 ~~8-801.~~

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

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

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

14 (3) ~~"CLASS 2 CERTIFIED NUTRIENT MANAGEMENT CONSULTANT"
15 MEANS A FARMER WHO IS CERTIFIED BY THE DEPARTMENT TO PREPARE A
16 NUTRIENT MANAGEMENT PLAN FOR ONLY THE FARMER'S SPECIFIC FARMING
17 OPERATION.~~

18 (c) ~~"Nutrient management plan" means a plan prepared under this subtitle by
19 a certified nutrient management consultant to manage the amount, placement,
20 timing, and application of animal waste, commercial fertilizer, sludge, or other plant
21 nutrients to prevent pollution by transport of bioavailable nutrients and to maintain
22 productivity.~~

23 8-801.1.

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

25 (i) When it is developed; and

26 (ii) Each time it is updated.

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

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

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

1 (2) (I) AS PART OF THE DEPARTMENT'S EVALUATION OF THE
2 IMPLEMENTATION OF THE PLAN, THE DEPARTMENT MAY VISIT THE PROPERTY THAT
3 IS THE SUBJECT MATTER OF THE PLAN SOLELY TO DETERMINE COMPLIANCE WITH
4 THE REGULATIONS.

5 (II) IN CONDUCTING THE SITE VISIT, THE DEPARTMENT MUST:

6 1. ENTER THE PROPERTY AT A REASONABLE TIME THAT
7 ALLOWS THE OPERATOR TO BE PRESENT; AND

8 2. CONDUCT THE EVALUATION IN A MANNER THAT
9 MINIMIZES ANY INCONVENIENCE TO THE OPERATOR.

10 (III) A PROPERTY OWNER OR OPERATOR WHO REFUSES TO
11 COOPERATE IN A SITE VISIT IS OUT OF COMPLIANCE WITH THE PROGRAM
12 REQUIREMENTS UNTIL THE DEPARTMENT CAN CONDUCT THE EVALUATION.

13 (2) ~~A PLAN PREPARED BY A CERTIFIED MANAGEMENT CONSULTANT~~
14 ~~SHALL BE DEEMED APPROVED AND SHALL BE ACCEPTED BY THE DEPARTMENT~~
15 ~~WITHOUT ANY REVIEW BY THE DEPARTMENT.~~

16 ~~8-802.~~

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

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

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

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

26 ~~8-803.~~

27 (a) ~~To apply for certification as a CLASS 1 nutrient management consultant, an~~
28 ~~applicant shall:~~

29 (1) ~~Submit to the Department an application on the form the~~
30 ~~Department requires; and~~

31 (2) ~~Pay to the Department the certification fee stated in § 8-806 of this~~
32 ~~subtitle.~~

33 (b) ~~The Department shall certify any individual AS A CLASS 1 NUTRIENT~~
34 ~~MANAGEMENT CONSULTANT who:~~

35 (1) ~~Meets the requirements of this subtitle;~~

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

3 (3) Passes a Department approved examination; and

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

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

6 ~~(e) THE DEPARTMENT SHALL ADOPT REGULATIONS PROVIDING FOR A
7 CERTIFICATION PROCESS THAT ALLOWS A FARMER SUBJECT TO THIS SUBTITLE TO
8 BE CERTIFIED AS A CLASS 2 NUTRIENT MANAGEMENT CONSULTANT.~~

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

11 ~~(1) ONE OR MORE TRAINING SESSIONS; AND~~

12 ~~(2) A WRITTEN EXAMINATION.~~

13 ~~(E) THE UNIVERSITY OF MARYLAND COOPERATIVE EXTENSION SERVICE, IN
14 CONSULTATION WITH THE DEPARTMENT, SHALL DEVELOP AND CONDUCT THE
15 TRAINING SESSIONS AND WRITTEN EXAMINATIONS.~~

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

17 ~~(1) Submit to the Department an application on the form the
18 Department requires; and~~

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

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

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

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

27 ~~(1) Submits a renewal application on the form that the Department
28 requires;~~

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

31 ~~(3) Complies with applicable continuing education requirements;~~

32 ~~(4) Complies with applicable record keeping and reporting requirements;~~
33 and

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

2 8-803.1.

3 (b) ~~This EXCEPT AS PROVIDED UNDER SUBSECTION (C) OF THIS SECTION,~~
4 THIS section does not apply to:

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

7 (2) A livestock operation with less than eight animal units ~~as defined in~~
8 ~~.40 C.F.R., Part 122, Appendix B~~ as 1,000 pounds of live animal weight per animal
9 unit.

10 (C) (1) A PERSON WHO OPERATES AN AGRICULTURAL OPERATION WITH
11 BETWEEN \$2,500 AND \$10,000 IN GROSS INCOME AND FEWER THAN 8 ANIMAL UNITS
12 SHALL:

13 (I) SUBMIT A NUTRIENT MANAGEMENT PLAN AS PROVIDED
14 UNDER SUBSECTIONS (F), (G), AND (H) OF THIS SECTION; OR

15 (II) ATTEND AN EDUCATIONAL PROGRAM ON THE USE OF THE
16 UNIVERSITY OF MARYLAND NUTRIENT MANAGEMENT RECOMMENDATIONS AND,
17 EVERY 3 YEARS, PROVIDE THE DEPARTMENT WITH A SIGNED COMPLIANCE
18 STATEMENT ON A FORM APPROVED BY THE DEPARTMENT.

19 (2) THE COMPLIANCE STATEMENT MUST CONTAIN AN AFFIRMATION
20 THAT THE OPERATOR IS:

21 (I) FOLLOWING THE UNIVERSITY OF MARYLAND
22 RECOMMENDATIONS BASED ON SOIL TESTS TAKEN AT LEAST EVERY 3 YEARS; AND

23 (II) MANAGING NUTRIENTS IN ACCORDANCE WITH THE
24 UNIVERSITY OF MARYLAND AND THE LOCAL SOIL CONSERVATION DISTRICT
25 RECOMMENDATIONS TO MINIMIZE THE POTENTIAL FOR NUTRIENT LOSS OR
26 RUNOFF.

27 (3) AN OPERATOR SUBJECT TO THIS SUBSECTION:

28 (I) MUST KEEP RECORDS DOCUMENTING IMPLEMENTATION OF
29 THE RECOMMENDATIONS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION; AND

30 (II) WILL BE SUBJECT TO SITE EVALUATION VISITS BY THE
31 DEPARTMENT.

32 [~~(c)~~] (D) The Governor shall provide sufficient funding in each fiscal year's
33 budget to:

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

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

3 (3) Meet the State's requirements for the implementation of the Manure
4 Transportation Pilot Project under § 8-704.2 of this title; and

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

7 ~~[(d)]~~ (E) (1) State cost sharing may be made available to farmers to help
8 offset the costs of having a nutrient management plan prepared by a certified
9 nutrient management consultant who is not employed by the federal, State, or a local
10 government.

11 (2) The Secretary of Agriculture shall adopt regulations authorizing the
12 disbursement of State cost sharing funds under this subsection.

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

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

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

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

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

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

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

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

35 ~~(1) A PERSON WHO, IN OPERATING A FARM, USES CHEMICAL~~
36 ~~FERTILIZER, SHALL COMPLY WITH A NUTRIENT MANAGEMENT PLAN FOR NITROGEN~~

1 AND PHOSPHORUS THAT MEETS THE REQUIREMENTS OF THIS SUBTITLE BY THE
2 EARLIER OF:

3 (†) DECEMBER 31, 2004; OR

4 (II) WITHIN 1 YEAR AFTER HAVING A NUTRIENT MANAGEMENT
5 PLAN.

6 (2) (†) A PERSON WHO, IN OPERATING A FARM, USES SLUDGE OR
7 ANIMAL MANURE, SHALL COMPLY WITH A NUTRIENT MANAGEMENT PLAN FOR
8 NITROGEN THAT MEETS THE REQUIREMENTS OF THIS SUBTITLE BY THE EARLIER
9 OF:

10 1. DECEMBER 31, 2004; OR

11 2. WITHIN 1 YEAR AFTER HAVING A NUTRIENT
12 MANAGEMENT PLAN.

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

17 1. JULY 1, 2007; OR

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

20 [(g)] (†) (H) A person may meet the requirements of subsection (e) of this
21 section by requesting, at least 60 days before the applicable date set forth in
22 subsection (e) of this section, the development of a nutrient management plan by a
23 certified nutrient management consultant.

24 (I) (1) (I) UNTIL DECEMBER 31, 2003, THE DEADLINES OF SUBSECTIONS
25 (F) AND (G) OF THIS SECTION DO NOT APPLY TO A PERSON WHO, ON OR BEFORE
26 AUGUST 1, 2002:

27 1. REQUESTS THE DEVELOPMENT OF A NUTRIENT
28 MANAGEMENT PLAN FROM A CERTIFIED MANAGEMENT CONSULTANT; OR

29 2. DEMONSTRATES A GOOD FAITH EFFORT TO COMPLY WITH
30 SUBSECTION (F) BY SUBMITTING TO THE DEPARTMENT A JUSTIFICATION FOR DELAY
31 FORM ON OR BEFORE AUGUST 1, 2002; AND

32 (II) CONTINUES TO TAKE THE NECESSARY STEPS TO HAVE AND
33 IMPLEMENT A PLAN.

34 (2) A PERSON WHO SATISFIES PARAGRAPH (1) OF THIS SUBSECTION MAY
35 ALSO BE CONSIDERED IN COMPLIANCE AFTER DECEMBER 31, 2003 IF THE

1 SECRETARY DETERMINES THAT CIRCUMSTANCES BEYOND THE REASONABLE
2 CONTROL OF THE PERSON PREVENTED COMPLIANCE.

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

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

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

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

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

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

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

20 (ii) Assessed with consideration given to:

21 1. The willfulness of the violation, the extent to which the
22 existence of the violation was known to but uncorrected by the violator, and the extent
23 to which the violator exercised reasonable care;

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

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

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

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

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

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

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

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

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

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

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

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

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

30 In implementing the Nutrient Management Program, the Department of
31 Agriculture:

32 (1) Shall adopt a streamlined certification program for farmers to
33 develop plans for their own specific farm circumstances;

34 (2) May not restrict any farm from equal access to all computer software
35 programs used by certified nutrient management planners;

1 (3) Shall accept the use of any software program which generates
2 recommendations consistent with those of the University of Maryland;

3 (4) Shall assist farmers and consultants, as needed, in obtaining
4 property tax ID information;

5 (5) Shall provide for a rolling submission date based on the time period
6 covered by the plan, not to exceed 3 years;

7 (6) Shall assure regulations provide the flexibility to allow farmers to
8 improve their yields as management techniques and technology change;

9 (7) Shall allow alterations to a Nutrient Management Plan due to
10 weather or circumstances beyond the control of a farmer to be documented as part of
11 the record keeping requirements for the plan;

12 (8) Shall expedite all plan reviews while assuring that all plans are
13 complete;

14 (9) Shall streamline the reviews for technical adequacy of cost-shared
15 plans;

16 (10) Shall streamline the plan criteria and implementation flexibility; and

17 (11) Shall acknowledge to the operator that a plan or a jurisdiction for
18 delay form has been received and that the plan or the delay form meets or does not
19 meet the requirements of the Department.

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