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By: **Senator Baker**

Introduced and read first time: January 24, 2002

Assigned to: Education, Health, and Environmental Affairs

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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 extending the deadlines for implementation of certain nutrient management  
12 plans to certain dates; requiring the Department to adopt certain regulations;  
13 and generally relating to nutrient management plans.

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

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

21 **Article - Agriculture**

22 8-801.

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

24 (b) (1) "Certified nutrient management consultant" means [an individual  
25 certified by the Department to prepare a nutrient management plan] A CLASS 1 OR  
26 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 (e) (1) By December 31, 2001, a person who, in operating a farm, uses  
15 chemical fertilizer, shall have a nutrient management plan for nitrogen and  
16 phosphorus that meets the requirements of this subtitle.

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

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

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

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

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

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

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

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

5 (I) DECEMBER 31, 2004; OR

6 (II) WITHIN 1 YEAR AFTER HAVING A NUTRIENT MANAGEMENT  
7 PLAN.

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

12 1. DECEMBER 31, 2004; OR

13 2. WITHIN 1 YEAR AFTER HAVING A NUTRIENT  
14 MANAGEMENT PLAN.

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

19 1. JULY 1, 2007; OR

20 2. WITHIN 1 YEAR AFTER HAVING A NUTRIENT  
21 MANAGEMENT PLAN.

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

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

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

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

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

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

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

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

8 (ii) Assessed with consideration given to:

9 1. The willfulness of the violation, the extent to which the  
10 existence of the violation was known to but uncorrected by the violator, and the extent  
11 to which the violator exercised reasonable care;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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