

BY: Environmental Matters Committee

AMENDMENTS TO SENATE BILL NO. 320
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Pollution -” insert “State Waters -”; in line 2, strike “Chesapeake”; in the same line, strike “and Atlantic Coastal Bays” and substitute “Bay”; in line 4, after “of” insert “adding a certain alternative to requirements for nutrient management plans; altering requirements relating to filings concerning nutrient management plans; eliminating the requirement that a certain farm owner or operator grant the Department of Agriculture the right of entry for a certain purpose; altering the term and fee for the renewal of certain licenses and certificates; authorizing the Department of Agriculture to issue certain certificates for persons operating a farm under certain circumstances; authorizing the Department of Agriculture to procure the services of private certified nutrient management consultants to develop nutrient management plans; authorizing the Department of Agriculture to review certain plans and records under certain circumstances; providing for certain site visits under certain circumstances;”; in the same line, strike “Chesapeake”; strike beginning with “and” in line 4 through “Bays” in line 5 and substitute “Bay”; in line 7, after “Department” insert “of the Environment”; in the same line, after “grants” insert “and loans”; and in line 25, after “Committee;” insert “requiring the Department to jointly report to certain legislative committees on or before a certain date;”.

On page 2, strike beginning with “establishment” in line 1 down through “Fund” in line 2 and substitute “reduction of nutrient water pollution in waters of the State, particularly the Chesapeake Bay and the Atlantic Coastal Bays”; and after line 2, insert:

“BY repealing and reenacting, with amendments,

Article - Agriculture

Section 8-801.1, 8-803, 8-803.1, and 8-806

Annotated Code of Maryland

(1999 Replacement Volume and 2003 Supplement)”.

(Over)

AMENDMENT NO. 2

On page 2, after line 14, insert:

“Article - Agriculture

8-801.1.

(a) (1) Each nutrient management plan shall be developed considering factors including:

(i) Levels of bioavailable nitrogen and phosphorus in the soil;

(ii) Levels of bioavailable nitrogen and phosphorus in all fertilizer materials to be applied;

(iii) The amount of nitrogen and phosphorus necessary to achieve the expected crop yield for the land that is the subject of the nutrient management plan, as determined by:

1. The field’s actual yield record and soil productivity for that crop; or

2. If information concerning actual yield record and soil productivity for a crop is unavailable, relevant information concerning similar fields and soil;

(iv) Soil erodibility and nutrient retention capacity;

(v) 1. The best reasonable scientific methods accepted by the Department and the University of Maryland Cooperative Extension Service; OR

2. SCIENTIFICALLY VALIDATED DATA FOR THE DEVELOPMENT OF A NUTRIENT MANAGEMENT PLAN AS DEFINED BY THE DEPARTMENT IN REGULATION; and

(vi) Existing best management practices.

(2) Each nutrient management plan shall provide flexibility for management decisions that may be required by conditions beyond the control of the farmer.

(b) (1) [Each] A SUMMARY OF EACH nutrient management plan shall be filed AND UPDATED with the Department[:

(i) When it is developed; and

(ii) Each time it is updated] AT A TIME AND IN A FORM THAT THE DEPARTMENT REQUIRES BY REGULATION.

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

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

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

(3)] The Department shall maintain a copy of each [nutrient management plan] SUMMARY for 3 years in a manner that protects the identity of the individual for whom the nutrient management plan was prepared.

8-803.

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

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

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

(b) The Department shall certify any individual who:

(Over)

- (1) Meets the requirements of this subtitle;
 - (2) Meets the Department's educational requirements, including a program on the proper application of nutrients;
 - (3) Passes a Department approved examination; and
 - (4)
 - (i) Is employed by a person licensed under this subtitle; or
 - (ii) Holds a license as required by this subtitle.
- (c) To apply for a license an applicant shall:
- (1) Submit to the Department an application on the form the Department requires;
- and
- (2) Pay to the Department the applicable license fee stated in § 8-806 of this subtitle.
- (d) The Department shall license a person who meets the requirements of this subtitle.
- (e) A certificate or license is issued for 1 year unless the certificate or license is renewed as provided by this subtitle.
- (f) The Department shall renew the certificate or license of any applicant for [an additional 1-year] A 3-YEAR term if the applicant:
- (1) Submits a renewal application on the form that the Department requires;
 - (2) Pays to the Department the applicable fee stated in § 8-806 of this subtitle;
 - (3) Complies with applicable continuing education requirements;
 - (4) Complies with applicable record keeping and reporting requirements; and

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

(G) (1) THE DEPARTMENT MAY ISSUE A FARM OPERATOR'S PLAN DEVELOPMENT CERTIFICATE TO A PERSON OPERATING A FARM FOR THE DEVELOPMENT OF THAT PERSON'S OWN NUTRIENT MANAGEMENT PLAN.

(2) THE CERTIFICATE IS VALID PROVIDED THE PERSON OPERATING THE FARM:

(I) HAS PAID THE ONE-TIME FEE PROVIDED IN § 8-806 OF THIS SUBTITLE;

(II) HAS PASSED AN EXAMINATION AS DETERMINED BY THE DEPARTMENT;

(III) COMPLIES WITH APPLICABLE CONTINUING EDUCATION REQUIREMENTS;

(IV) COMPLIES WITH APPLICABLE RECORD KEEPING AND REPORTING REQUIREMENTS; AND

(V) OTHERWISE IS ENTITLED TO BE CERTIFIED.

8-803.1.

(a) In this section, "gross income" means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.

(b) This section does not apply to:

(1) An agricultural operation with less than \$2,500 in gross income; or

(2) A livestock operation with less than eight animal units defined as 1,000 pounds of live animal weight per animal unit.

(Over)

- (c) The Governor shall provide sufficient funding in each fiscal year's budget to:
- (1) Assist in the development of nutrient management plans;
 - (2) Meet the technical assistance and evaluation requirements of this section;
 - (3) Meet the State's requirements for the implementation of the Manure Transportation Project under § 8-704.2 of this title; and
 - (4) Provide State assistance under the Maryland Agricultural Water Quality Cost Share Program in the Department.
- (d) (1) State cost sharing may be made available [to farmers] to help offset the costs of having a nutrient management plan prepared by a certified nutrient management consultant who is not employed by the federal, State, or a local government.
- (2) The Secretary of Agriculture shall adopt regulations authorizing the disbursement of State cost sharing funds under this subsection.
- (3) THE DEPARTMENT MAY PROCURE THE SERVICES OF A PRIVATE CERTIFIED NUTRIENT MANAGEMENT CONSULTANT TO DEVELOP NUTRIENT MANAGEMENT PLANS FOR PERSONS OPERATING A FARM.
- (e) (1) By December 31, 2001, a person who, in operating a farm, uses chemical fertilizer, shall have a nutrient management plan for nitrogen and phosphorus that meets the requirements of this subtitle.
- (2) (i) By December 31, 2001, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen.
- (ii) By July 1, 2004, a person who, in operating a farm, uses sludge or animal manure, shall have a nutrient management plan for nitrogen and phosphorus.
- (f) (1) By December 31, 2002, a person who, in operating a farm, uses chemical fertilizer, shall comply with a nutrient management plan for nitrogen and phosphorus that meets the

requirements of this subtitle.

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

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

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

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

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

(i) (1) A person who violates any provision of subsection (f) of this section or of any rule, regulation, or order adopted or issued under this section is subject to:

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

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

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

(Over)

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

(ii) Assessed with consideration given to:

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

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

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

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

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

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

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

(j) If a person violates any provision of this section, the Department may:

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

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

(k) (1) The Department shall determine compliance with the provisions of this section.

(2) THE DEPARTMENT MAY REVIEW THE NUTRIENT MANAGEMENT PLAN AND RECORDS RELATING TO THE PLAN AT A LOCATION AGREED TO BY THE DEPARTMENT AND THE PERSON OPERATING THE FARM.

(3) IN CONDUCTING A SITE VISIT AND REVIEWING THE NUTRIENT MANAGEMENT PLAN AND RELATED RECORDS, THE DEPARTMENT'S EVALUATION SHALL BE LIMITED SOLELY TO DETERMINING WHETHER THE PERSON OPERATING THE FARM IS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION AND THE REGULATIONS IMPLEMENTING THIS SECTION.

(4) IN CONDUCTING A SITE VISIT, THE DEPARTMENT SHALL:

(I) PROVIDE THE PERSON OPERATING THE FARM AT LEAST 48 HOURS ADVANCE NOTICE;

(II) ENTER THE PROPERTY AT A REASONABLE TIME THAT ALLOWS THE PERSON OPERATING THE FARM TO BE PRESENT; AND

(III) CONDUCT THE EVALUATION IN A MANNER THAT MINIMIZES ANY INCONVENIENCE TO THE PERSON OPERATING THE FARM.

(5) IF A PERSON OPERATING A FARM FAILS TO COOPERATE WITH THE DEPARTMENT'S REQUEST TO CONDUCT A SITE VISIT AND REVIEW OF A NUTRIENT MANAGEMENT PLAN AND RECORDS RELATING TO THE PLAN, THAT PERSON IS SUBJECT TO SUBSECTIONS (I) AND (J) OF THIS SECTION.

8-806.

(a) Except for a government agency, the Department shall charge the following fees under this subtitle:

(1) Certificate (nutrient management consultant)\$50;

(Over)

- (2) License (individual or sole proprietorship) \$50;
- (3) License (corporation or partnership) \$100; [and]
- (4) Renewal [~~\$50~~] \$150; AND
- (5) CERTIFICATE (FARM OPERATOR’S PLAN DEVELOPMENT) \$20.

(b) The Department shall charge an applicant for the full cost of any training provided by the Department under this subtitle.

(c) All moneys collected under this subtitle shall be deposited in the General Fund of the State.”;

and strike beginning with “CHESAPEAKE” in line 21 down through “BAYS” in line 22 and substitute “BAY”.

On page 5, in line 9, after “(CC)” insert “(1)”; in line 10, strike “A COUNTY, MUNICIPAL CORPORATION, COMMISSION,”; strike beginning with “OR” in line 10 through “AND” in line 11; in line 11, strike “OF THEIR UNITS” and substitute “UNIT OF THE STATE, COMMISSION, SPECIAL TAXING DISTRICT”; after line 12, insert:

“(2) PERSON DOES NOT INCLUDE A COUNTY, MUNICIPAL CORPORATION, BI-COUNTY OR MULTI-COUNTY AGENCY UNDER ARTICLE 28 OR 29 OF THE CODE, HOUSING AUTHORITY UNDER ARTICLE 44A OF THE CODE, SCHOOL BOARD, COMMUNITY COLLEGE, OR ANY OTHER UNIT OF A COUNTY OR MUNICIPAL CORPORATION.”;

in line 25, after “TO” insert “:

(I)”;

in line 27, strike “POLLUTION” and substitute “POLLUTANT”; and in the same line, after “PERMIT” insert “:

- (II) AN ONSITE SEWAGE DISPOSAL SYSTEM; OR
- (III) A SEWAGE HOLDING TANK".

On page 7, in line 2, strike "CHESAPEAKE"; strike beginning with "AND" in line 2 through "BAYS" in line 3 and substitute "BAY"; in line 26, after "(I)" insert "BEGINNING JANUARY 1, 2005, "; in line 27, after "BILL" insert "AND EACH USER OF AN ONSITE SEWAGE DISPOSAL SYSTEM OR A HOLDING TANK THAT RECEIVES A WATER BILL"; in lines 29 and 31, in each instance, strike "JULY" and substitute "OCTOBER"; in lines 30 and 32, in each instance, strike ",\$2.50 PER MONTH" and substitute "THAT DOES NOT RECEIVE A WATER BILL, \$30 PER YEAR"; in line 33, after "(IV)" insert "BEGINNING JANUARY 1, 2005, "; and in line 34, after "THAT" insert "RECEIVES A SEWER BILL AND THAT".

On page 8, in line 14, after "BILL," insert "A USER OF AN ONSITE SEWAGE DISPOSAL SYSTEM OR A HOLDING TANK THAT RECEIVES A WATER BILL,"; in line 18, after "SEWER" insert "OR WATER"; in the same line, after "BILL" insert ", AS APPROPRIATE,"; in line 15, after "THAT" insert "RECEIVES A WATER AND SEWER BILL AND THAT"; in line 21, after "A" insert "WATER OR "; in line 23, after "(II)" insert "1. A. IF THE USER DOES NOT RECEIVE A WATER BILL,"; in line 24, after "TANK," insert "THE COUNTY IN WHICH THE ONSITE SEWAGE DISPOSAL SYSTEM OR HOLDING TANK IS LOCATED SHALL BE RESPONSIBLE FOR COLLECTING"; strike beginning with "SHALL" in line 24 through "DEPARTMENT" in line 26; after line 26, insert:

"B. A COUNTY MAY NEGOTIATE WITH A MUNICIPAL CORPORATION LOCATED WITHIN THE COUNTY FOR THE MUNICIPAL CORPORATION TO COLLECT THE RESTORATION FEE FROM ONSITE SEWAGE DISPOSAL SYSTEMS AND HOLDING TANKS LOCATED IN THE MUNICIPAL CORPORATION.

2. THE GOVERNING BODY OF EACH COUNTY, IN CONSULTATION WITH THE BAY RESTORATION FUND ADVISORY COMMITTEE, SHALL DETERMINE THE METHOD AND FREQUENCY OF COLLECTING THE RESTORATION FEE UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH.";

and in line 31, strike “MEASURING METHODS” and substitute “METHODS OF MEASUREMENT”.

On page 9, in line 11, after “FACILITY” insert “DOES NOT DISCHARGE NITROGEN OR PHOSPHORUS AND”; and in line 33, after the second “A” insert “WATER OR”.

On page 10, in line 6, strike “WASTEWATER FACILITY” and substitute “LOCAL GOVERNMENT”; in the same line, after the second “THE” insert “WATER OR”; in line 11, after the second “A” insert “WATER OR”; in line 14, strike “AND” and substitute “OR”; in line 29, strike “THE WASTEWATER FACILITY” and substitute “A LOCAL GOVERNMENT”; and in the same line, strike the second “THE” and substitute “A WATER OR WASTEWATER”.

On page 11, strike beginning with the colon in line 6 down through “(II)” in line 8; and in line 34, strike “SUBSECTION” and substitute “SUBSECTIONS (H) AND”.

On page 12, in line 28, after “(II)” insert “AND (III)”; strike beginning with “1.” in line 32 down through the second “AND” in line 37 and substitute “DISBURSE THE FUNDS AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION.”; and after line 37, insert:

“(2) THE COMPTROLLER SHALL:

(I) DEPOSIT 60% OF THE FUNDS IN THE SEPARATE ACCOUNT TO BE USED FOR:

1. WITH PRIORITY GIVEN TO FAILING SYSTEMS AND HOLDING TANKS LOCATED IN THE CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA, GRANTS OR LOANS FOR UP TO 100% OF:

A. THE COSTS ATTRIBUTABLE TO UPGRADING AN ONSITE SEWAGE DISPOSAL SYSTEM TO THE BEST AVAILABLE TECHNOLOGY FOR THE REMOVAL OF NITROGEN; OR

B. THE COST DIFFERENCE BETWEEN A CONVENTIONAL ONSITE SEWAGE DISPOSAL SYSTEM AND A SYSTEM THAT UTILIZES THE BEST

AVAILABLE TECHNOLOGY FOR THE REMOVAL OF NITROGEN; AND

2. THE REASONABLE COSTS OF THE DEPARTMENT, NOT TO EXCEED 8% OF THE FUNDS DEPOSITED INTO THE SEPARATE ACCOUNT, TO:

A. IMPLEMENT AN EDUCATION, OUTREACH, AND UPGRADE PROGRAM TO ADVISE OWNERS OF ONSITE SEWAGE DISPOSAL SYSTEMS AND HOLDING TANKS ON THE PROPER MAINTENANCE OF THE SYSTEMS AND TANKS AND THE AVAILABILITY OF GRANTS AND LOANS UNDER ITEM 1 OF THIS SUBPARAGRAPH;

B. REVIEW AND APPROVE THE DESIGN AND CONSTRUCTION OF ONSITE SEWAGE DISPOSAL SYSTEM OR HOLDING TANK UPGRADES;

C. ISSUE GRANTS OR LOANS AS PROVIDED UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH; AND

D. PROVIDE TECHNICAL SUPPORT FOR OWNERS OF UPGRADED ONSITE SEWAGE DISPOSAL SYSTEMS OR HOLDING TANKS TO OPERATE AND MAINTAIN THE UPGRADED SYSTEMS; AND”.

On page 13, in line 1, strike “2.” and substitute “(II)”; in the same line, strike “30%” and substitute “40%”; in line 4, strike “(2)” and substitute “(3)”; in the same line, after “COMPTROLLER” insert “, IN CONSULTATION WITH THE ADMINISTRATION,”; in line 32, strike “\$7,000,000” and substitute “\$5,000,000”; and in line 36, after “COLLECTED” insert “FROM USERS OF WASTEWATER FACILITIES”.

On page 14, in line 7, after “FEES” insert “IMPOSED ON USERS OF WASTEWATER FACILITIES THAT ARE”; in line 9, strike “IN FISCAL YEARS 2005 THROUGH 2007, INCLUSIVE,”; and in line 11, after “A” insert “WATER OR”.

On page 17, in line 8, after “(V)” insert “IN CONSULTATION WITH THE GOVERNING BODY OF EACH COUNTY;

1. IDENTIFY USERS OF ONSITE SEWAGE DISPOSAL SYSTEMS AND HOLDING TANKS; AND

2. MAKE RECOMMENDATIONS TO THE GOVERNING BODY OF EACH COUNTY ON THE BEST METHOD OF COLLECTING THE BAY RESTORATION FEE FROM THE USERS OF ONSITE SEWAGE DISPOSAL SYSTEMS AND HOLDING TANKS THAT DO NOT RECEIVE WATER BILLS;

(VI) ADVISE THE DEPARTMENT ON THE COMPONENTS OF AN EDUCATION, OUTREACH, AND UPGRADE PROGRAM ESTABLISHED WITHIN THE DEPARTMENT UNDER SUBSECTION (H)(2)(I)2 OF THIS SECTION;

(VII) STUDY THE AVAILABILITY OF MONEY FROM THE FUND FOR THE SUPPLEMENTAL ASSISTANCE PROGRAM WITHIN THE DEPARTMENT TO PROVIDE GRANTS TO SMALLER, ECONOMICALLY DISADVANTAGED COMMUNITIES IN THE STATE TO UPGRADE THEIR WASTEWATER COLLECTION AND TREATMENT FACILITIES;

(VIII);

and in line 10, strike “(VI)” and substitute “(IX)”.

On page 19, in line 21, strike “CHESAPEAKE”; and strike beginning with “AND” in line 21 through “BAYS” in line 22 and substitute “BAY”.

On page 20, in line 4, after “Committee” insert “, in consultation with the governing body of each county,”; in line 8, after “fee” insert “by local governments”; in line 9, after “tanks” insert “that do not receive water bills”; in line 20, after “That” insert “, on or before December 31, 2006, the Department of the Environment shall, subject to § 2-1246 of the State Government Article, jointly report to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee regarding the implementation of the onsite sewage disposal system and holding tank education, outreach, and upgrade program and the extent of administrative costs incurred by the Department in the implementation of the program authorized under § 9-1605.2(h)(2)(i) of the Environment Article, as enacted by Section 1 of this Act.”

SECTION 6. AND BE IT FURTHER ENACTED, That”;

in line 19, strike “under” and substitute “by”; and in line 21, strike “October” and substitute “July”.