

SENATE BILL 182

Unofficial Copy
M4

2004 Regular Session
4lr0186
CF 4lr0193

By: **The President (By Request - Administration) and Senators Astle, Brinkley, Colburn, Dyson, Greenip, Hafer, Haines, Harris, Hogan, Jacobs, Middleton, Mooney, Munson, Pipkin, ~~and Stoltzfus~~ Stoltzfus, and Kramer**

Introduced and read first time: January 23, 2004
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 16, 2004

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of adding a certain alternative to requirements for nutrient
4 management plans; altering requirements relating to filings concerning
5 nutrient management plans; eliminating the requirement that a certain farm
6 owner or operator grant the Department of Agriculture the right of entry for a
7 certain purpose; altering the term and fee for the renewal of certain licenses and
8 certificates; authorizing the Department to issue certain certificates for persons
9 operating a farm under certain circumstances; authorizing the Department to
10 procure the services of private certified nutrient management consultants to
11 develop nutrient management plans; authorizing the Department to review
12 certain plans and records under certain circumstances; providing for certain site
13 visits under certain circumstances; and generally relating to nutrient
14 management.

15 BY repealing and reenacting, with amendments,
16 Article - Agriculture
17 Section 8-801.1, 8-803, 8-803.1, and 8-806
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2003 Supplement)

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

Article - Agriculture

1 8-801.1.

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

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

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

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

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

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

15 (iv) Soil erodibility and nutrient retention capacity;

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

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

21 (vi) Existing best management practices.

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

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

27 (i) When it is developed; and

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

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

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

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

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

8 8-803.

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

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

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

15 (b) The Department shall certify any individual who:

16 (1) Meets the requirements of this subtitle;

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

19 (3) Passes a Department approved examination; and

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

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

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

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

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

27 (d) The Department shall license a person who meets the requirements of this
28 subtitle.

29 (e) A certificate or license is issued for 1 year unless the certificate or license
30 is renewed as provided by this subtitle.

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

- 1 (1) Submits a renewal application on the form that the Department
2 requires;
- 3 (2) Pays to the Department the applicable fee stated in § 8-806 of this
4 subtitle;
- 5 (3) Complies with applicable continuing education requirements;
- 6 (4) Complies with applicable record keeping and reporting requirements;
7 and
- 8 (5) Otherwise is entitled to be certified or licensed.

9 (G) THE DEPARTMENT MAY ISSUE A FARM OPERATOR'S PLAN DEVELOPMENT
10 CERTIFICATE TO A PERSON OPERATING A FARM FOR THE DEVELOPMENT OF THAT
11 PERSON'S OWN NUTRIENT MANAGEMENT PLAN. THE CERTIFICATE IS VALID
12 PROVIDED THE PERSON OPERATING THE FARM:

- 13 (1) HAS PAID THE ONE-TIME FEE PROVIDED IN § 8-806 OF THIS
14 SUBTITLE;
- 15 (2) HAS PASSED AN EXAMINATION AS DETERMINED BY THE
16 DEPARTMENT;
- 17 (3) COMPLIES WITH APPLICABLE CONTINUING EDUCATION
18 REQUIREMENTS;
- 19 (4) COMPLIES WITH APPLICABLE RECORD KEEPING AND REPORTING
20 REQUIREMENTS; AND
- 21 (5) OTHERWISE IS ENTITLED TO BE CERTIFIED.

22 8-803.1.

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

25 (b) This section does not apply to:

- 26 (1) An agricultural operation with less than \$2,500 in gross income; or
- 27 (2) A livestock operation with less than eight animal units defined as
28 1,000 pounds of live animal weight per animal unit.

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

- 31 (1) Assist in the development of nutrient management plans;
- 32 (2) Meet the technical assistance and evaluation requirements of this
33 section;

1 (3) Meet the State's requirement for the implementation of the Manure
2 Transportation Project under § 8-704.2 of this title; and

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

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

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

11 (3) THE DEPARTMENT MAY PROCURE THE SERVICES OF A PRIVATE
12 CERTIFIED NUTRIENT MANAGEMENT CONSULTANT TO DEVELOP NUTRIENT
13 MANAGEMENT PLANS FOR PERSONS OPERATING A FARM.

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

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

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

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

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

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

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

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

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

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

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

14 (ii) Assessed with consideration given to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (II) ENTER THE PROPERTY AT A REASONABLE TIME THAT ALLOWS
15 THE OPERATOR TO BE PRESENT; AND

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

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

22 8-806.

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

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

26 (2) License (individual or sole proprietorship) \$50;

27 (3) License (corporation or partnership) \$100; [and]

28 (4) Renewal [\$50] \$150; AND

29 (5) CERTIFICATE (FARM OPERATOR'S PLAN DEVELOPMENT) \$20.

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2004.