

Maryland Nutrient Management Law

Article - Agriculture

§ 8-801.

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

(b) "Certified nutrient management consultant" means an individual certified by the Department to prepare a nutrient management plan.

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

§ 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) A summary of each nutrient management plan shall be filed and updated with the Department at a time and in a form that the Department requires by regulation.

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

§ 8-802.

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

(b) An individual may apply to the Department for certification as a certified nutrient management consultant.

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

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

§ 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:

(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 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.

(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 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:

(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 or 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.

§ 8-803.2.

(a) A person who applies nutrients for hire to land used for agricultural purposes shall be a certified nutrient management consultant or work under a nutrient management consultant certified under § 8-803 of this subtitle.

(b) A person who applies nutrients for hire to land used for agricultural purposes, who is not a certified nutrient management consultant, shall make available documentation, in the form of a work order, bill of lading, or similar document, to the landowner or land manager that the person is working under a certified nutrient management consultant.

(c) The Secretary shall adopt regulations to implement this section.

§ 8-803.3.

(a) This section does not apply to:

- (1) A person who applies nutrients to 10 acres or less of land each year; or
- (2) A person who applies nutrients for hire.

(b) A person who engages in the activity of applying nutrients to land which the person owns or manages and which is used for agricultural purposes shall complete an educational program in nutrient application every 3 years.

(c) (1) The Secretary, in consultation with the Nutrient Management Advisory Committee under § 8-804 of this subtitle, shall create or approve educational programs under this section.

(2) The nutrient application educational programs are to be offered at sites distributed throughout the State.

(3) The Department shall issue to a participant upon completion of an education program under this section, a voucher of completion.

(4) The Department shall maintain a registry of persons who have received vouchers of completion in a nutrient application educational program under this section.

§ 8-803.4.

(a) This section applies to an application of commercial fertilizer, as defined in § 6-201 of this article:

(1) That is performed by:

- (i) A person who applies commercial fertilizer for hire; or
- (ii) An employee of the owner or manager of the property; and

(2) To:

- (i) Ten acres or more annually, whether one or multiple parcels, of property that is not used for agricultural purposes; or
- (ii) State property that is not used for agricultural purposes.

(b) A person may apply commercial fertilizer only if the person applies the commercial fertilizer in a manner that is consistent with the recommendations of the University of Maryland Cooperative Extension Service.

(c) (1) A person who violates any provision of this section is subject to a civil penalty of not more than \$1,000 for a first violation.

(2) A person who violates any provision of this section is subject to a civil penalty of not more than \$2,000 for each subsequent violation.

(3) Each day a violation occurs under this section is a separate violation.

(4) The total penalties imposed on a person for violations of this section that result from the same set of facts and circumstances may not exceed \$10,000.

(d) The penalty imposed on a person under this section shall be assessed with consideration given to:

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

(2) Any actual harm to human health or to the environment including injury to or impairment of the use of the waters of the State or the natural resources of the State;

(3) The cost of control;

(4) The nature and degree of injury to or interference with general welfare, health, and property;

(5) The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety; and

(6) 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.

(e) Penalties collected by the Secretary under this section shall be paid into the General Fund of the State.

§ 8-803.5.

The Department may adopt regulations for agricultural research, education, and demonstration exemptions to this subtitle.

§ 8-804.

(a) (1) The Department shall establish a Nutrient Management Advisory Committee. The Secretary shall appoint to the Committee representatives of the agricultural community, the environmental community, the commercial lawn care, biosolids, and agricultural fertilizer industries, academia, and appropriate government units. The Secretary also shall appoint to the Committee a representative of county government from a list submitted by the Maryland Association of Counties. The President of the Senate of Maryland shall appoint to the Committee one Senator and the Speaker of the House of Delegates shall appoint to the Committee one Delegate.

(2) (i) The Nutrient Management Advisory Committee shall report to the Governor and the General Assembly, in accordance with § 2-1246 of the State Government Article, by July 1 of each year on the implementation of the requirements of the Water Quality Improvement Act of 1998.

(ii) The report required under subparagraph (i) of this paragraph shall include information regarding:

1. The level of participation in the nutrient management plan program;
2. Additional resources that may be needed to meet the requirements of § 8-803.1 of this subtitle;
3. The effectiveness of nutrient application education programs; and
4. The effectiveness of the Manure Transportation Project set forth in § 8-704.2 of this title.

(b) In consultation with the Nutrient Management Advisory Committee, the Department shall by regulation:

(1) Prescribe the criteria, form, and content for certified nutrient management plans applicable to licensees and certificate holders;

(2) Establish continuing education requirements for certified nutrient management consultants and persons receiving vouchers of completion under § 8-803.3 of this subtitle; and

(3) Adopt guidelines and requirements for licensees and certified nutrient management consultants on record keeping and on reporting requirements to the Department on nutrient management plans.

§ 8-805.

Subject to the provisions of the Administrative Procedure Act, the Department may deny, suspend, or revoke a certificate or license for a violation of this subtitle or for a violation of any regulation adopted under this subtitle by the Department.

§ 8-806.

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

- (1) Certificate (nutrient management consultant) \$50;
- (2) License (individual or sole proprietorship) \$50;
- (3) License (corporation or partnership) \$100;

(4) Renewal \$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.

§ 8-807.

On or before December 31 of each year, the Department of Agriculture shall report to the Governor, and, in accordance with § 2-1246 of the State Government Article, the General Assembly, on the farm acreage covered by nutrient management plans and the implementation and evaluation of those plans.