

Nutrient Management

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On Wednesday, Gov. Casey said, "We're very pleased with this bill. We've been working on it for three years. We feel it's the cornerstone of our commitment to cleaning up the tributaries that feed the Chesapeake Bay."

A spokesman for Casey, Tom Kelchner, deputy press secretary, said Thursday evening that the governor intends to sign the proposed law, but it must first be signed-off by the speaker of the House, and the Senate president pro tempore before going to the governor.

While a date hasn't been set, it is reasonable to expect the governor to sign it shortly after receiving it, since he has requested the law.

Though the proposed law is the result of many years of effort by various legislators and committee staff members, the prime sponsor of House Bill 100 is Jeffrey Coy, D-Shippensburg.

Coy, who is also a member of the Chesapeake Bay Commission, said Wednesday, "This is has been a five or six-year process for me since the first bill was introduced in the Pennsylvania House of Representatives, and I feel very good about it (now passing). It should have been passed before, but it took a lot of negotiations, and the end result of all that negotiation is good legislation."

Though he said he was pleased with passing of the bill, Coy said it should have been done last year. "I hesitate to be critical of the past, (but) this could have been passed, certainly very easily last year," he said.

Last year as the previous legislature was readying to end, Coy and several others in the House had taken a draft bill crafted by a team of negotiators and had it introduced as an amendment to an environmental education bill, getting it easily passed in the House. That bill was very close to the wording included in HB 100.

That was done at the same time that Senate Democrats took control of the Senate, setting up a fast-track for legislation, since the governor, the House and the Senate were all controlled by the Democratic Party.

Rep. Sheila Miller, a R-Host, had been executive director of the Senate Agriculture and Rural Affairs Committee, prior to last fall's election.

According to her, much of HB 100's wording is a result of work that she and others, including those in the House, had been circulating in hopes of arriving at a workable compromise over nutrient management. She said that draft was taken by Coy and other House Democrats last year and was offered as a final nutrient management proposal.

The proposal was quickly pushed through the House, with only those very close to the negotiations having any knowledge of what was actually contained in the proposal.

It then failed in the Senate, because the Senate adjourned before the bill got to the floor. But it had been expected to pass and was supported by all major agricultural groups.

Since being reintroduced by Coy this session, the proposal passed the House by an overwhelming majority, and then went to the Senate where no amendments were offered.

Coy said he isn't trying to take credit for the creating the bill.

"There was significant negotiation. I don't want to say I did it all. There has been substantial negotiation on this matter and many different points, and I don't think any one segment can take credit," Coy said. "The fact that time was involved and negotiations occurred was probably good, but it could have been done last session."

State Secretary of Agriculture Boyd E. Wolff said Thursday, "Pennsylvania's Nutrient Management Act resulted from a great deal of give and take between varying interests and organizations.

"The compromise that resulted has a number of benefits for the farmers who will be affected. Number one, the act provides for uniform requirements for all farmers in the commonwealth so that a local entity can't pass stricter measures," Wolff said.

"This version also has a reasonable time frame and gives farmers more input. The advisory board called for in the act is something we worked very hard to obtain. In addition, Pennsylvania's nutrient management act forces the commonwealth to also look at non-agricultural non-point sources such as urban runoff and septic systems."

The Pennsylvania Farmers' Association, in a statement made shortly after the bill's passage in the Senate, "... welcomed the passage ... of nutrient management legislation by the Pennsylvania Senate."

"While we're not looking forward to more regulations, we believe this legislation is the right way to help clean up ground and surface water," said Keith Eckel, PFA president.

"PFA believes that a more comprehensive assessment is necessary to understand the extent of contributions by all entities which are polluting.

"Controlling pollutants such as on-lot septic systems, septic cleaners, municipal waste-water plants, residential fertilizer application, inadequately constructed wells, storm drainage systems, storm water run off and other non-point sources, needs to be examined with a critical eye and properly addressed," he said.

Sen. Noah Wenger, R-Ephrata, who was instrumental

in some landmark agricultural legislation such as farmland preservation, said the bill represents, "the best possible solution to the issue that we can reach at this time." He estimated it would affect 15 to 20 percent of the state's farmers.

"This recognizes that there are many sources of water pollution, and everyone has a responsibility for maintaining water quality," Wenger said.

Lamonte Garber, agricultural policy specialist for the Chesapeake Bay Foundation, said Wednesday, "This is the most important step Pennsylvania has taken to prevent non-point pollution to state waterways and the Chesapeake Bay."

William Baker, CBF president praised Coy and said, "The Nutrient Management Act gives Pennsylvania a necessary tool in the effort to meet the Chesapeake Bay Agreement's 40 percent nutrient reduction goal. We urge the other Bay states to follow Pennsylvania's lead."

HOUSE BILL

NO. 100

Nutrient Management

An act providing for the management of nutrients on certain agricultural operations to abate nonpoint source pollution, for the certification of nutrient management specialists and for the assessment of other non-point sources of nutrient pollution to the waters of this Commonwealth; establishing the Nutrient Management Advisory Board and providing for its powers and duties; establishing the Nutrient Management Fund; and providing for enforcement and penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Nutrient Management Act.

Section 2. Declaration of legislative purpose.

The purposes of this act are as follows:

(1) To establish criteria, nutrient management planning requirements and an implementation schedule for the application of nutrient management measures on certain agricultural operations which generate or utilize animal manure.

(2) To provide for the development of an educational program by the State Conservation Commission in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the Department of Agriculture and conservation districts to provide outreach to the agricultural community on the proper utilization and management of nutrients on farms to prevent the pollution of surface water and ground water.

(3) To require the State Conservation Commission, in conjunction with the Cooperative Extension Service of The Pennsylvania State University, Department of Environmental Resources, Department of Agriculture and the Nutrient Management Advisory Board to develop and provide technical and financial assistance for nutrient management and alternative uses of animal manure, including a manure marketing and distribution program.

(4) To require the Department of Environmental Resources to assess the extent of nonpoint source pollution from other nutrient sources, determine the adequacy of existing authority and programs to manage those sources and make recommendations to provide for the abatement of that pollution.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"AEU." Animal equivalent unit.
"AEU per acre" An animal equivalent unit per acre of crop land or acre of land suitable for application of animal manure.

"Agricultural operations." The management and use of farming resources for the production of crops, livestock or poultry.

"Animal equivalent unit." One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

"Best management practice" or "BMP." A practice or combination of practices determined by the commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface and ground water taking into account applicable nutrient requirements for crop utilization. Best management practices include, but are not limited to:

- (1) Conservation tillage.
- (2) Crop rotation.
- (3) Soil testing.
- (4) Manure testing.
- (5) Diversions.
- (6) Manure storage facilities.
- (7) Storm water management practices.
- (8) Nutrient application.

"Board." The Nutrient Management Advisory Board created by section 8.

"Commission." The State Conservation Commission established by the act of May 15, 1945 (P.L. 547, No. 217), known as the Conservation District Law.

"Concentrated animal operation." Agricultural operations meeting the criteria established under this act.

"Conservation district." Any county conservation district established under the act of May 15, 1945 (P.L. 547, No. 217), known as the Conservation District Law.

"Cooperative extension." The Cooperative Extension Service of The Pennsylvania State University.

"Department." The Department of Environmental Resources of the Commonwealth.

"Fund." The Nutrient Management Fund.

"Nutrient." A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

"Nutrient management plan." A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in sections 4 and 6.

"Nutrient management specialist." A person satisfying the certification requirements of section 7.

Section 4.

Powers and duties of commission.

The commission shall have the following powers and duties:
(1) Within two years after the effective date of this act, and periodically thereafter, to promulgate regulations in consultation with the Department of Agriculture, the department and the board, establishing minimum criteria for nutrient management plans developed in accordance with section 6 and other regulatory requirements to implement this act. In establishing such criteria, the commission shall consult the department's manure management for environmental protection manual, the Pennsylvania agronomy guide, published by the Pennsylvania State University and the Pennsylvania Technical Guide for Soil and Water Conservation, published by the United States Department of Agriculture's Soil Conservation Service. The criteria to be established pursuant to this section shall include the following:

(i) An identification of nutrients as defined by this act. Unless otherwise appropriate pursuant to specific criteria which shall be established by the commission, there shall be a presumption that nitrogen is the nutrient of primary concern.

(ii) The establishment of procedures to determine proper application rates of nutrients to be applied to land based on conditions of soil and levels of existing nutrients in the soil and the type of agricultural, horticultural or floricultural production to be conducted on the land.

(iii) An identification of best management practices to be utilized for nutrient management.

(iv) The establishment of recordkeeping requirements related to land application and distribution of nutrients.

(v) The establishment of minimum standards of construction, location, storage capacity and operation of facilities intended to be used for storage of animal manure.

(vi) The establishment of conditions under which amendments to nutrient management plans are required to be made after initial development or filing.

(vii) The establishment of special criteria which may be utilized for manure handling in emergency situations where there is an outbreak of a contagious disease.

(viii) The establishment of conditions under which changes due to unforeseen circumstances render the plan amendment process set forth in section 6 (E) impracticable. Where such conditions exist, the owner or operator of an agricultural operation shall follow the procedures set forth in section 6 (F).

(2) To continually evaluate emerging practices, methods and technology for utilization as best management practices and to so identify same, where appropriate, pursuant to paragraph (1) (iii).

(3) Five years after the effective date of regulations adopted pursuant to paragraph (1), and periodically thereafter, to evaluate the criteria for concentrated animal operations in this Commonwealth and to make appropriate changes in those criteria by regulation. Any such regulatory change related to concentrated animal operations shall require a two-thirds majority vote of the commission.

(4) Prior to the adoption of regulations under paragraph (1), to recommend in consultation with the Department of Agriculture, the department and the board, interim criteria for the sole purpose of facilitating the initial development of the nutrient management certification program established by this act.

(5) Within two years after the effective date of this act to develop and implement, in cooperation with the Department of Agriculture, the board, the Cooperative Extension and conservation districts, a program to provide education and technical assistance to the agricultural community and, to the extent funds are available, to provide financial assistance to existing agricultural operations for implementation of proper methods, practices, facilities and techniques for the utilization and management of nutrients on the farm to prevent the pollution of ground water and surface water.

(6) To consult with the board as provided in section 8.

(7) To issue orders and take actions as are necessary to administer and enforce this act.

(8) To delegate administration or enforcement authority, or both, under this act to county conservation districts that have an adequate program and sufficient resources to accept and implement this delegation.

Section 5.

Powers and duties of department.

The department shall have the following powers and duties:
(1) Within one year after the effective date of this act, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which malfunctioning on-lot sewage systems contribute to the pollution of waters of this Commonwealth, and to identify what regulatory or legislative initiatives, if any, the department deems necessary to abate that pollution.

(2) Within one year after the effective date of this act, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which improper water well construction contributes to groundwater pollution due to the intrusion of nutrients from the surface and to identify what regulatory or legislative initiatives, if any, the department deems necessary to abate that pollution.

(3) Within two years after the effective date of this act, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which the application of chemical fertilizers and other plant nutrients for nonagricultural purposes contributes to the pollution of the waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the department deems necessary to abate that pollution.

(4) Within two years after the effective date of this act, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which nutrients from storm water runoff contribute to the pollution of waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the department deems necessary to abate that pollution.

(5) Within two years after the effective date of this act, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which atmospheric deposition of nutrients contribute to the pollution of the waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the department deems necessary to abate such pollution.

(6) To include in the above assessments, recommendations to the General Assembly for budgetary and legislative initiatives where program resources or statutory authority is not adequate to address pollution sources identified therein.

(7) To provide technical and administrative assistance to the commission in carrying out its responsibilities under this act.

Section 6.

Nutrient management plans.

(a) Concentrated animal operations. Concentrated animal operations are those agricultural operations where the animal density exceeds two AEUs per acre on an annualized basis. Five years after the effective date of regulations adopted pursuant to section 4(1), and from time to time thereafter, the commission, in consultation with the Department of Agriculture, the board, the department, and the Cooperative Extension Service shall review the criteria used to identify concentrated animal operations and make appropriate changes to the definition of concentrated animal operations by regulation.

(b) Development of nutrient management plans. The operator of any concentrated animal operation shall develop and implement a nutrient management plan consistent with the requirements of this section.

(c) Certification of plans. All plans and plan amendments shall be developed by nutrient management specialists who shall certify that the plans are in accordance with the requirements of this act and the regulations promulgated under this act.

(d) Review procedure. Nutrient management plans required by this section shall be submitted for review in accordance with the following schedule:

(1) For a concentrated animal operation in existence on the effective date of regulations promulgated under section 4(1), within one year after the effective date of such regulations.

(2) For a concentrated animal operation which comes into existence after the effective date of regulations promulgated under section 4(1), within three months after such date or prior to the commencement of operations, whichever is later.

(3) For an agricultural operation which, because of expansion, meets the criteria for a concentrated animal operation within three months after the date of expansion.

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