

Nutrient Management

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(e) Plan review and approval. Plans or plan amendments required under this act shall be submitted to local conservation districts for review and approval, or alternatively to the commission for agricultural operations located in counties not delegated administrative authority under section 4. Any person performing the plan review must be certified in accordance with section 7. Within 90 days of receipt of a nutrient management plan or plan amendment, the reviewing agency shall either approve, modify or disapprove the plan or plan amendment. Approvals shall only be granted for those plans or plan amendments which satisfy the requirements of this act and the regulations promulgated under this act. Notice of determination to approve, modify or disapprove a plan or plan amendment shall be provided in writing to the person submitting same. Notice of a determination to modify or disapprove shall include an explanation specifically stating the reasons for modification or disapproval. If a plan or plan amendment is disapproved, the person submitting a plan or plan amendment for the first time shall have 90 days after receipt of notice of disapproval to resubmit a revised plan or plan amendment. An agricultural operation that submits a complete plan or plan amendment is authorized to implement the same if the reviewing agency fails to act within 90 days of submittal. Where the reviewing agency fails to so act and the plan or plan amendment is resubmitted and the reviewing agency again fails to act within 90 days of resubmittal, it shall be deemed approved.

(f) Amendments due to unforeseen circumstances. Amendments to plans or to implementation of plans made after initial development or filing which satisfy the criteria established under section 4(1) (VII) shall be certified by a nutrient management specialist prior to implementation and submitted to the district within 30 days of implementation.

(g) Implementation. A person required to develop a nutrient management plan pursuant to subsection (B) shall fully implement such plan within three years of the date such plan is approved, or is deemed approved, or for which implementation is otherwise authorized pursuant to subsection (E), unless extended for cause shown or by a plan amendment. The three-year implementation schedule shall be extended an additional two years for individual substantial capital improvements required under an approved plan for an operation required to submit a plan under subsection (D)(1) if:

(1) The owner or operator demonstrates that the cost of all or part of the individual improvements for which the extension is applicable cannot be financed through available funding mechanisms; and

(2) A sum of \$2,000,000 or more has not been appropriated for grants and loans to the nutrient management fund created under section 10, above and beyond any Chesapeake Bay Nonpoint Source Pollution Abatement moneys that may be appropriated to the fund, within one year of the effective date of regulations adopted pursuant to section 4(1).

(h) Voluntary plans. Any agricultural operation which is not a concentrated animal operation may voluntarily develop a nutrient management plan and have it reviewed pursuant to this section. To the extent possible, the commission, the Cooperative Extension Service, the Department of Agriculture, the department and conservation districts shall assist and promote the development of voluntary plans.

(i) Financial assistance. Any agricultural operation receiving financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program or otherwise receiving financial assistance under this act for the development of a nutrient management plan shall agree to develop and implement a nutrient management plan as a condition for receiving this financial assistance.

(j) Compliance plans. Any agricultural operation found to be in violation of the act of June 22, 1937 (P.L. 1987, NO. 394), known as the Clean Streams Law, may be required to submit a nutrient management plan within three months or notification thereof and implement the plan in order to prevent or abate such pollution.

(k) Transferability of plans. A plan approved under this section shall be transferable to a subsequent owner of an agricultural operation upon notification thereof to the district, unless the transfer results in operational changes requiring plan modification pursuant to the criteria established under section 4(1)(vi).

(l) Construction of Section. The density criteria for concentrated animal operations, as identified in subsection (A) or as it may be subsequently modified by the commission, shall only be utilized to identify those agricultural operations for which the planning requirements of this section shall apply and shall not be construed to prohibit the development or expansion of agricultural operations meeting or exceeding such criteria

Section 7.

Nutrient management certification program.

(a) Content of program. The Department of Agriculture shall establish, in consultation with the commission, a Nutrient Management Certification Program for the purpose of certifying individuals who have demonstrated the competency necessary to develop nutrient management plans. The Department of Agriculture, or its designee, shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The Department of Agriculture shall by regulation establish such fees and terms and conditions of certification as it deems appropriate and establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans for their own agricultural operations.

(b) Interim certification program. Until the Department of Agriculture develops and implements a certification program, persons having the following qualifications shall, upon request, receive interim certification from the Department of Agriculture.

(1) the person has at least two years experience in the development of nutrient management plans;

(2) the person is approved to develop nutrient management plans approved under the Chesapeake Bay Nonpoint Source Pollution Abatement Program, the United States Department of Agriculture's Water Quality Improvement Projects Program or other programs requiring submission and approval of a nutrient management plan including sludge disposal under the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act; or

(3) the person is a farmer who has been provided training and assistance in developing and implementing nutrient management plans.

(c) Nutrient management specialist. A person shall not certify a nutrient management plan or plan amendment unless that person has first satisfied the requirements of this section

Section 8.

Nutrient Management Advisory Board.

(a) Creation. There is hereby created the Nutrient Management Advisory Board. The board shall consist of 15 members appointed by the chairman of the commission and approved by a two-thirds vote of the commission. The members so appointed shall consist of five active commercial farm owners or operators representing the livestock, swine, meat poultry, egg poultry and dairy industry nominated by statewide general farm organizations, one veterinary nutrition specialist, one representative from the feed industry, one representative from the fertilizer industry, one representative of commercial agricultural lenders, one representative of local government, one representative of academia who shall be an agronomist or plant scientist faculty member of the school of agriculture of a Pennsylvania college or university, one hydrologist, two citizen representatives who are not farmers and one environmental representative, all of whom shall have sufficient knowledge, experience or familiarity with agronomic or nutrient management practices and all of whom shall be residents of this Commonwealth

(b) Compensation. Board members shall not receive a salary but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties.

(c) Meetings. A majority of the board shall constitute a quorum. All actions of the board shall be by a majority vote. The board shall meet upon the call of the commission, but not less than semiannually, to carry out its duties under this act. The board shall annually select a chairman and such other officers as it deems appropriate

(d) Duties. The board shall review and comment on all commission regulations and the interim criteria established under section 4(3) developed to implement the provisions of this act. The commission shall have no power to promulgate regulations under this act until receipt of

written comments on the proposed regulations from the board or until 60 days have expired from the date when the regulations were submitted by the commission to the board for its comments. Existing regulations shall continue until modified, superseded or repealed by the commission under this section.

(e) Term. The term of office for each board member shall be three years except that the commission shall stagger the initial terms of the charter members such that five shall serve for one year, five shall serve for two years and five shall serve for three years. Board members may be appointed to successive terms at the discretion of the commission, provided that no member may serve more than two three-year terms.

Section 9.

Financial assistance.

(a) Loans, grants, etc. The commission shall, to the extent funds are available, provide financial assistance in the form of loans, loan guarantees and grants for the implementation of nutrient management plans for existing agricultural operations.

(b) Criteria for eligibility. In reviewing applications for financial assistance, the commission shall consider the following:

(1) Whether the project will improve the health, safety or environment of the people of this Commonwealth and otherwise satisfy the purposes of this act.

(2) The cost effectiveness of the proposed practices in comparison with other alternatives.

(3) The applicant's ability to operate or maintain the practices in a proper manner.

(c) Issuance and terms. Subject to this section, the commission shall issue loans and set terms applicable thereto in any manner it deems appropriate. The commission may consider such factors as it deems relevant, including current market interest rates, the financial ability of the applicant to repay, and the necessity to maintain the funds created hereunder in a financially sound manner. Loans may be based on the ability to repay from future revenue to be derived from the applicant's agricultural operation, by a mortgage or other security interest, or by any other fiscal manner which the commission deems appropriate. The board shall have the power to defer principal on loans for up to 12 months. The minimum rate of interest to be paid on any loan made pursuant to this section shall be 1%.

(d) Grants. Grants shall be made available as follows:

(1) where funds therefore have been made available to the commission, subject to any conditions that may have accompanied the receipt of such funds;

(2) where the commission in its sole discretion, determines that the financial condition of the recipient is such that repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of practices without a grant.

(e) Grants and loans. The commission shall, where it deems it appropriate and to the extent financial circumstances permit, mix grant funds with loan funds.

Section 10.

Nutrient Management Fund.

(a) Establishment of fund. There is hereby created a special non-lapsing fund in the State Treasury to be known as the Nutrient Management Fund. All fees, fines, judgments and interest collected by the commission under this act shall be paid into the fund. All money placed in the fund and the interest it accrues are hereby appropriated to the commission on a continuing basis for any activities necessary to meet the requirements of this act.

(b) Supplements to fund. The Nutrient Management Fund may be supplemented by moneys received from the following sources:

(1) State funds appropriated to the commission.

(2) Federal funds appropriated to the commission.

(3) Proceeds from the sale of any bonds made available to the commission.

(4) Repayment of loan principal.

(5) Payment on interest loans made by the commission.

(6) Gifts and other contributions from public and private sources

(c) Fund administration. The commission shall have authority to adopt procedures for the use of moneys in the fund including the creation of accounts within the fund for the purposes of administering the loan and grant programs authorized by this act

(d) Status of fund. The Nutrient Management Fund shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system).

(e) Deposit and use of funds. No administrative action shall prevent the deposit of moneys into the fund in the fiscal year in which they are received. The funds shall only be used for the purposes authorized by this act and shall not be transferred or diverted to any other purpose by administrative action.

Section 11.

Unlawful conduct.

It shall be unlawful to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this act or the rules and regulations adopted under this act or to fail to comply with a nutrient management plan.

Section 12.

Civil penalties and remedies.

(a) Civil penalty. In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act or a rule of regulation adopted, order issued or nutrient management plan approved under this act, the commission may assess a civil penalty of not more than \$500 for the first day of each offense and \$100 for each additional day of continuing violation. The factors for consideration in determining the amount of the penalty are:

(1) The gravity of the violation.

(2) The potential harm to the public.

(3) The potential effect on the environment

(4) The willfulness of the violation.

(5) Previous violations.

(6) The economic benefit to the violator for failing to comply with this act.

Whenever the commission finds that a violation did not cause harm to human health or an adverse effect on the environment, the commission may issue a warning in lieu of assessing a penalty where the owner or operator, upon notice, takes immediate action to resolve the violation and come into compliance. If the commission finds the nutrient pollution or the danger of nutrient pollution results from conditions, activities or practices which are being or have been implemented in accordance with a nutrient management plan developed and approved pursuant to and consistent with this act and the regulations developed under this act and which is being or has been fully implemented and maintained, the owner or operator of the agricultural operation shall be exempt from the imposition of penalties under this act.

(b) Collection. In cases of inability to collect the civil penalty or failure of any person to pay all or a portion of the penalty, the commission may refer the matter to the Office of General Counsel or the Office of Attorney General which shall institute an action in the appropriate court to recover the penalty. Any penalty assessed shall act as a lien on the property of the person against whom the penalty has been assessed.

(c) Civil remedies. In addition to any other remedies provided for in this act, any violation of this act, the rules and regulations promulgated under this act OR any order or nutrient management plan approved under this act shall be abatable in the manner provided by law or equity for the abatement of public nuisances. In addition, in order to restrain or prevent any violation of this act or the rules and regulations promulgated under this act or any order or nutrient management plan approved under this act, suits may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, the General Counsel, the district attorney of any county, the solicitor of any municipality affected or the solicitor of any conservation district, provided that the General Counsel, District Attorney or solicitor shall first serve notice upon the Attorney General of the intention to so proceed. These proceedings may be prosecuted in the Commonwealth Court or in the court of common pleas of the county where the activity has taken place, the condition exists or the public is affected, and, to that end, jurisdiction is hereby conferred in law and equity upon these courts. Except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate abatement of the nuisance, the court may, in its decree, fix a reasonable time during which the person responsible for the nuisance may make provision for the abatement of same.

(d) Equitable relief. In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction, special injunction or temporary restraining order may be issued upon the terms prescribed by the court, notice of the application therefore having been given to the defendant in accordance with the rules of equity practice. In any such proceeding, the Attorney General, the General Counsel, the district attorney or the solicitor of any municipality or conservation district shall not be required to give bond. In any such proceeding, the court shall issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this act or is engaged in conduct which is causing immediate and irreparable harm to the public. In addition to an injunction, the court in such equity proceeding may assess civil penalties in accordance with this section.

Section 13.

Limitation of liability.

If a person is fully and properly implementing a nutrient management plan, approved by the local conservation district or the commission and maintained under this act for an agricultural operation, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients pursuant to the implementation

Section 14.

Enforcement authority; enforcement orders.

(A) Right of access. A duly authorized agent of the commission or a conservation district shall have authority to enter any agricultural operation at reasonable times to conduct such investigations and to take such actions as are necessary to enforce the provisions of this act or any order, rule or regulation issued hereunder.

(B) Duty to grant access. Any person owning or operating an agricultural operation shall grant access to any duly authorized agent of the commission or a conservation district pursuant to subsection (A) shall not hinder, obstruct, prevent or interfere with such agents in the performance of their duties, provided, however, that agents shall perform such reasonable measures and actions as directed by the owner or operator of an agricultural operation as will reasonably and substantially prevent the spread or outbreak of contagious diseases.

(C) Orders. The commission or any conservation district delegated enforcement authority may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Any order issued under this section shall take effect upon notice unless the order specifies otherwise. An appeal of the order to the Environmental Hearing Board shall not act as a supersedeas provided that upon application for and cause shown, the Hearing Board may issue such a supersedeas under the rules established by the Hearing Board.

Section 15.

Appealable actions.

Any person aggrieved by an order or other administrative action of the commission issued pursuant to this act shall have the right, within 30 days from actual or constructive notice of the action, to appeal the action to the Environmental Hearing Board.

Section 16.

Powers reserved under existing laws

Nothing in this act shall limit in any way whatever the powers conferred upon the commission, Department of Agriculture, department or conservation district under laws other than this act, including, but not limited, to the act of June 22, 1937 (P.L. 1987, No. 394), known as the Clean Streams Law and the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act and common law. All such powers are preserved and may be freely exercised. A court exercising general equitable jurisdiction shall not be deprived of such jurisdiction even though a nuisance or condition detrimental to health is subject to regulation or other action by the board under this act.

Section 17.

Preemption of local ordinances.

This act and its provisions are of statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations. Upon adoption of the regulations authorized by section 4, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this act if the municipal ordinance or regulation is in conflict with this act and the regulations promulgated thereunder. Nothing in this act shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this act and the regulations promulgated under this act, provided, however, that no penalty shall be assessed under any such local ordinance or regulation for any violation for which a penalty has been assessed under this act.

Section 18.

Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 19.

Effective date.

This act shall take effect in 60 days.

Ten Bulls Enter Program

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Also bred and entered for testing was 29 H7343 Imperial-C Cubby Choice-ET, also a Cubby son, but out of Imperial-C Cleit Carmen-ET, a Cleitus daughter with a 3.4 percent protein. She is backed by Osdel-Endeavor Mark Carla-ET, a Chief Mark full sister to the bulls Endeavor and half sister to Cubby.

ABS also acquired 29 H7251 Brook-Twain M A Prancer-ET from Springville Holstein breeder Walter Earl Brooks. He is a Madawaska Aerostar son out of Pen-Col Rotate Praise, a 90-point Excellent mammary cow backed by Bova and Pete.

Brooks also bred 29 H7266 Brooks-Twain M A Porter-ET, a full brother to Prancer.

Kirby and Sheryl Horst, of Newmanstown, bred 29 H7375 Lynncrest Stan Equator, a son of Stan-Bitzie Kirk Bell Boss, from dam Weaverline Black Ebony-ET, a Blackstar daughter. Equator's maternal grandam is an 88-point Chief Mark daughter with an Excellent mammary and his great grandam is an Excellent Valiant with three records of more than 30,000 pounds of milk.

Another bull entered into testing is Rynd-Home Silver Clinton-ET,

bred by Rynd Home Farm, Cochranton, and acquired from Dallas Rynd and Judy Wolford of Ashville, Ohio, is a Madawaska Aerostar son out of Osdel-Endeavor Mark Clara-ET, a VG, Dam of Merit. Clara is a Chief Mark daughter and a full sister to Endeavor.

Also acquired was 29 H7439 Londondale Magneto-ET, bred by Dennis London, of Punxsutawney. Magneto is a son from Roc-Hil-Val Mark Stuffy-ET out of Londondale BS Magic-ET, an 86-point Blackstar two-year-old with an Excellent mammary with a lactation of 24,000 pounds of milk. Magneto's grandam is a Jesse daughter.