

MAINE STATE LEGISLATURE

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L.D. 2596

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AGRICULTURE, CONSERVATION AND FORESTRY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1861, L.D. 2596, Bill, "An Act to Revise the Law Protecting Farmers' Right to Farm"

Amend the bill by striking out the title and substituting the following:

'An Act to Revise the Law Protecting Farmers' Right to Farm and to Provide for Nutrient Management Plans to be Confidential'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 7 MRSA §4202, sub-§1, as amended by PL 1999, c. 530, §4, is further amended to read:

1. Nutrient management plan required. A person who owns or operates a farm that meets the criteria established in subsection 2 shall have a nutrient management plan for that farm and shall implement the provisions in that plan by the dates specified for that category of farm in subsection 4, 5, 6 or 7. The nutrient management plan must be prepared by a person certified in accordance with section 4202, subsection 2 and must address the storage and utilization of all farm nutrients generated on or transported to the farm. A nutrient management plan developed by a farm owner or operator is deemed to have been prepared by a certified nutrient management specialist if a certified nutrient management specialist reviews the plan for compliance with this chapter, signs the plan and notifies the department in accordance with subsection 3. For livestock farms, the nutrient management plan must address storage and utilization of farm nutrients for the entire farm operation including leased or rented land. For crop farms, the plan must address storage and utilization of farm

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2 nutrients on land on which manure is utilized or stored. The
3 plan must establish minimum distances between manure storage,
4 stacking and spreading areas and property lines and surface water
5 based on site-specific factors. The plan must provide for manure
6 storage for a minimum of 180 days. A nutrient management plan
7 prepared in accordance with this section is confidential and is
8 not a public record as defined in Title 1, section 402,
9 subsection 3. A copy of a nutrient management plan required
10 under this section must be available to the commissioner or the
11 commissioner's designee upon request. A nutrient management plan
12 must include the following:

- 13 A. Provisions for soil erosion control;
- 14 B. Minimum distances between manure storage, stacking and
- 15 spreading areas and property lines and surface waters;
- 16 C. Results of soil tests for land designated in the plan
- 17 for manure spreading or manure irrigation;
- 18 D. Results of manure tests;
- 19 E. Statement of yield goals for land receiving farm
- 20 nutrients;
- 21 F. Additional information established through rulemaking;
- 22 G. Site-specific dates recommended for the spreading of
- 23 manure and spraying or irrigation of liquid manure. In
- 24 compliance with section 4207, the plan may not recommend
- 25 spreading between December 1st of a calendar year and March
- 26 15th of the following calendar year; and
- 27 H. A recommended timetable for implementing the plan.

28 **Sec. 2. 17 MRSA §2805**, as amended by PL 1997, c. 642, §§4 and
29 5, is further amended to read:

30 **§2805. Farms or farm operations not a nuisance; use of best**
31 **management practices**

32 **1. Definition.** As used in this section, unless the context
33 otherwise indicates, the following terms have the following
34 meanings.

35 A. "Farm" means the land, buildings and machinery used in
36 the commercial production of farm products.

37 B. "Farm operation" means a condition or activity that
38 occurs on a farm in connection with the commercial
39

production of farm products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects, fumes, operation of machinery and irrigation pumps, ground and aerial seeding, ground spraying, composting of material produced by the farm or to be used at least in part on the farm, disposal of manure, the application of chemical fertilizers, soil amendments, conditioners and pesticides and the employment and use of labor.

C. "Farm product" means those plants and animals useful to man humans and includes, but is not limited to forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products.

~~2.---Best-management-practices.---A-farm-or-farm-operation-may not-be-considered-a-public-or-private-nuisance-if-the-farm-or farm--operation--alleged--to--be--a--nuisance--conforms--to--best management--practices,--as--determined--by--the--Commissioner--of Agriculture,--Food--and--Rural--Resources--in--accordance--with--the Maine-Administrative-Procedure-Act,-Title-5,-chapter-375.~~

~~Implementation--of--a--nutrient--management--plan--developed--in accordance--with--Title--7,--section--4204--constitutes--a--best management-practice-with-regard-to-nutrient-management-for-a-farm that-generates-or-utilizes-manure.~~

2-A. Farm or farm operation not nuisance. A farm or farm operation may not be considered a public or private nuisance if the farm or farm operation alleged to be a nuisance meets one of the following conditions:

A. The farm or farm operation conforms to best management practices, as determined by the Commissioner of Agriculture, Food and Rural Resources in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375;

B. For complaints regarding the storage or use of farm nutrients as defined in Title 7, section 4201, subsection 4, the farm or farm operation has implemented a nutrient management plan developed in accordance with Title 7, section 4204 and operation of the farm is consistent with the nutrient management plan; or

C. The farm or farm operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm as long as, before the change in land use or occupancy, the farm or farm operation would not have been considered a nuisance. This paragraph does not apply

2 to a farm or farm operation that materially changes the
4 conditions or nature of the farm operation after a change in
6 the land use or occupancy of land within one mile of the
8 boundaries of the farm. Nothing in this paragraph affects
10 the applicability of any of the other provisions of this
12 section.

14 ~~3. -- Change in land use. -- A farm or farm operation shall not~~
16 ~~be considered a public or private nuisance if the farm or farm~~
18 ~~operation existed before a change in the land use or occupancy of~~
20 ~~land within one mile of the boundaries of the farm and, before~~
22 ~~the change in land use or occupancy of land, the farm or farm~~
24 ~~operation would not have been a nuisance.~~

26 **3-A. Violation of municipal ordinances.** A method of
28 operation used by a farm or farm operation located in an area
30 where agricultural activities are permitted may not be considered
32 a violation of a municipal ordinance if the method of operation
34 constitutes a best management practice as determined by the
36 Department of Agriculture, Food and Rural Resources.

38 **4. Application; municipal ordinances.** This section does
40 not affect the application of state and federal laws. After the
42 effective date of this subsection, a municipality must provide
44 the Commissioner of Agriculture, Food and Rural Resources with a
46 copy of any proposed ordinance that impacts farm operations. The
48 clerk of the municipality or a municipal official designated by
50 the clerk shall submit a copy of the proposed ordinance to the
commissioner at least 90 days prior to the meeting of the
legislative body or public hearing at which adoption of the
ordinance will be considered. The commissioner shall review the
proposed ordinance and advise the municipality if the proposed
ordinance would restrict or prohibit the use of best management
practices. This subsection does not affect municipal authority
to enact ordinances.

38 **5. Complaint resolution.** The commissioner shall
40 investigate all complaints involving a farm or farm operation,
42 including, but not limited to, complaints involving the use of
44 waste products, ground and surface water pollution and insect
46 infestations. In cases of insect infestations not arising from
48 agricultural activities, when the State Entomologist believes
50 that the infestation is a public nuisance and is able to identify
the source or sources of the infestation, the commissioner shall
refer the matter to the Department of the Attorney General. If
the commissioner finds upon investigation that the person
responsible for the farm or farm operation is using best
management practices, the commissioner shall notify that person
and the complainant of this finding in writing. If
Notwithstanding subsection 2-A, paragraph C, if the commissioner

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identifies the source or sources of the problem, ~~has reason to believe that the source is a nuisance~~ and finds that the nuisance problem is caused by the use of other than best management practices, the commissioner shall:

A. Determine the changes needed in the farm or farm operation to comply with best management practices and prescribe site specific best management practices for that farm operation;

B. Advise the person responsible for the farm or farm operation of the changes, as determined in paragraph A, that are necessary to conform with best management practices and determine subsequently if those changes are implemented; and

C. Give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible.

5-A. Good faith. The Maine Rules of Civil Procedure, Rule 11 applies in any private action filed against the owner or operator of a farm or farm operation in which it is alleged that the farm or farm operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only.

6. Failure to adopt best management practices. If the person responsible for the farm or farm operation does not ~~adept~~ apply best management practices as required by the Commissioner of Agriculture, Food and Rural Resources, the commissioner shall send a written report to an appropriate agency if a federal or state law has been violated and to the Attorney General. The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this section or any other applicable state law, and the court may order the abatement with costs as provided under section 2702, such injunctive relief as provided in this section or by other applicable law, or that a civil violation has been committed. Failure to apply best management practices in accordance with this section constitutes a separate civil violation for which a forfeiture of up to \$1,000, together with an additional forfeiture of up to \$250 per day for every day that the violation continues, may be adjudged.

7. Agricultural Complaint Response Fund. There is established the nonlapsing Agricultural Complaint Response Fund. The commissioner may accept funds from any source designated to be placed in the fund. The commissioner may authorize expenses from the fund as necessary to investigate complaints involving a farm or farm operation and to abate conditions potentially resulting from farms or farm operations.

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