

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

tional Facilities Development Fund established by the Maine Revised Statutes, Title 12, section 609.

See title page for effective date.

CHAPTER 642

S.P. 653 - L.D. 1874

An Act Regarding Nutrient Management

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State is encountering increasing numbers of complaints from Maine citizens regarding manure; and

Whereas, a number of new large animal production facilities are being proposed to be built in Maine; and

Whereas, the United States Environmental Protection Agency has identified animal agriculture as a major contributor to surface water quality problems in the United States demanding immediate attention; and

Whereas, the Department of Agriculture, Food and Rural Resources does not have authority to adequately regulate the use and management of manure on Maine farms under current Maine law; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-D, sub-§5 is enacted to read:

5. Nutrient Management Review Board Expenses Only 7 MRSA §4203

Sec. 2. 7 MRSA Pt. 10 is enacted to read:

PART 10

NUTRIENT MANAGEMENT

CHAPTER 747

NUTRIENT MANAGEMENT ACT

§4201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Animal feeding operation. "Animal feeding operation" means a lot or facility where animals are confined and fed for a total of at least 45 days in a 12-month period. "Animal feeding operation" does not include an aquatic animal production facility.

2. Animal unit. "Animal unit" means 1,000 pounds of animal body weight.

3. Board. "Board" means the Nutrient Management Review Board established in section 4203.

4. Farm nutrient. "Farm nutrient" means a substance or recognized plant nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value for use in growing crops. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge, residuals or combinations of these.

5. Nutrient management plan. "Nutrient management plan" means a written document that outlines how farm nutrients are stored, managed and utilized on the farm for which the plan is written.

6. Regulated residual. "Regulated residual" means a residual regulated by the Department of Environmental Protection pursuant to Title 38, chapter 13.

7. Residual. "Residual" means any material generated as a byproduct of a nonagricultural production or treatment process that has value as a source of crop nutrients or soil amendment.

8. Verified complaint of improper manure handling. "Verified complaint of improper manure handling" means a complaint of improper manure handling investigated in accordance with Title 17, section 2701-B and resulting in a determination by the commissioner that the manure has been stored or handled in a manner that does not conform with best management practices.

§4202. Duties of the commissioner

The commissioner shall implement a program to promote responsible use of farm nutrients in accordance with this chapter. The commissioner has the powers and duties as set forth in this section.

1. Nutrient management plans. In accordance with Title 5, chapter 375, the commissioner shall adopt rules to establish minimum requirements for nutrient management plans required under section 4204, a process for review of the nutrient management plans, periodic revisions to plans and determination of compliance with the plans. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The commissioner shall maintain a list of farms that have a nutrient management plan based on notification received pursuant to section 4204, subsection 3.

2. Certification of persons to prepare nutrient management plans. The commissioner shall develop a program to train and certify persons in the preparation of nutrient management plans. The commissioner may establish minimum educational requirements for persons eligible for certification.

3. Livestock operations permits. The commissioner shall issue livestock operations permits in accordance with section 4205.

4. Educational outreach. The commissioner shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this chapter and the need for nutrient management planning. The commissioner shall inform the public about manure-related issues and the department's efforts to address manure-related issues.

5. Enforcement. Whenever it appears to the commissioner that there is or has been a violation of this chapter, rules adopted under this chapter or the conditions of a permit or variance issued under this chapter, the commissioner may initiate an enforcement action.

§4203. Nutrient Management Review Board

The Nutrient Management Review Board is established pursuant to Title 5, section 12004-D, subsection 5.

1. Duties. The board's duties are as follows:

A. The board shall review and approve all proposed amendments to the original rules adopted in accordance with this chapter; and

B. When an aggrieved party within 30 days of the commissioner's decision appeals a decision of the commissioner regarding a permit required under section 4205, the board shall hold a hearing in accordance with Title 5, chapter 375, subchapter IV. The board may affirm, amend or reverse a permit decision made by the commissioner. The board's decision is a final agency action.

2. Membership. The board consists of 7 members appointed as follows:

A. One member from the University of Maine Cooperative Extension Service with expertise in agricultural production appointed by the Director of the Cooperative Extension Service;

B. The Commissioner of Environmental Protection or the commissioner's designee;

C. The commissioner or the commissioner's designee; and

D. Four other persons appointed by the Governor, consisting of:

(1) One member with expertise in nutrient management or soil science;

(2) One member actively involved in a livestock production operation with less than 300 animal units;

(3) One member actively involved in a livestock production operation with more than 300 animal units; and

(4) One member with an interest in nutrient management issues representing the general public.

3. Terms of membership; chair. Except for initial appointees, each member appointed by the Governor serves for a term of 4 years. In the case of a vacancy, the Governor shall appoint a member to fill the unexpired term. The Governor shall determine initial appointment terms to stagger term expirations. The board shall annually elect one of its members as chair.

4. Compensation. Members of the board are entitled to expenses only.

5. Staff. The department shall provide staff to the board.

6. Meetings. The board shall meet twice a year with the commissioner to discuss the implementation and enforcement of the provisions of this chapter and as needed to perform its duties.

§4204. Nutrient management plan

1. Nutrient management plan required. Except as provided in subsection 4, beginning on December 1, 1998, 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. 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 nutrients on land on which manure is utilized or stored. A copy of a nutrient management plan required under this section must be available to the commissioner or the commissioner's designee upon request. A nutrient management plan must include the following:

- A. Provisions for soil erosion control;
- B. Minimum distances between manure storage, stacking and spreading areas and property lines and surface waters;
- C. Results of soil tests for land designated in the plan for manure spreading or manure irrigation;
- D. Results of manure tests;
- E. Statement of yield goals for land receiving farm nutrients; and
- F. Additional information established through rulemaking.

2. Farms requiring a nutrient management plan. A farm that meets one or more of the following criteria is required to have a nutrient management plan:

- A. A farm that confines and feeds 50 or more animal units at any one time;
- B. A farm that utilizes more than 100 tons of manure per year not generated on that farm;
- C. A farm that, after December 1, 1998, is the subject of a verified complaint of improper manure handling; or
- D. A farm that stores or utilizes regulated residuals.

3. Responsibility of person preparing nutrient management plans. Upon completion of a nutrient management plan, a person certified to prepare nutrient management plans in accordance with this chapter shall notify the department. The notification must include the name and address of the owner or operator of the farm and the location of the farm for

which the plan was prepared. A person preparing a nutrient management plan required by this chapter shall adhere to rules adopted in accordance with this chapter pertaining to the preparation and requirements of the plan.

4. Delayed compliance date for certain farms.

Notwithstanding the provisions of subsections 1 to 3, an owner or operator of a farm that is operational on the effective date of this chapter and meets the criteria established in subsection 2, paragraph A, B or D is not required to have a nutrient management plan prepared for that farm until January 1, 2001. A nutrient management plan must be prepared in accordance with this chapter no later than January 1, 2001. The plan must be implemented no later than October 1, 2005.

§4205. Livestock operations permit

1. Operations requiring a permit. Beginning on May 1, 1999, a permit issued by the commissioner pursuant to subsection 2 is required for an animal feeding operation that meets one or more of the following criteria:

- A. The operation is a concentrated animal feeding operation as defined by rules adopted pursuant to this section;
- B. The operation confines and feeds 300 or more animal units and prior to April 15, 1998 the operation did not confine and feed 300 or more animal units; or
- C. Proposes an expansion beyond the operation's manure storage capacity or land base used for spreading.

2. Criteria for issuing permits; rulemaking.

An applicant for a permit required under this section must submit to the commissioner a nutrient management plan that meets the requirements established pursuant to section 4204. Prior to issuing a permit, the commissioner or a designee of the commissioner shall inspect the operation and determine that the operation is in compliance with the nutrient management plan. The commissioner shall adopt rules in accordance with Title 5, chapter 375 to establish a process for application review and issuing permits required under this section. The rules may establish permit application fees, inspection requirements and procedures for review by the board of permitting decisions. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

§4206. Rulemaking

The department, the Department of Environmental Protection and the Maine Land Use Regulation

Commission each may adopt rules in accordance with the Maine Revised Statutes, Title 5, chapter 375 to establish standards and a permitting process for new large concentrated animal feeding operations and existing operations expanding beyond a designated threshold. Such rules must be provisionally adopted and submitted to the Legislature for review as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A no later than December 15, 1998. For the purposes of this section, a "large concentrated animal feeding operation" means a lot or facility where more than 1,000 animal units are confined and fed for a total of at least 45 days in a 12-month period.

§4207. Winter spreading of manure prohibited

Beginning December 1, 1999, a person may not spread manure on agricultural fields between December 1st of a calendar year and March 15th of the following calendar year. This prohibition includes the spreading of manure and spraying or irrigation of liquid manure. Upon application to the commissioner, the commissioner may grant a variance to allow a person to spread manure during the winter due to financial hardship or other circumstances that necessitate the application. In granting a variance, the commissioner must impose restrictions to minimize potential environmental degradation and prescribe actions to ensure future compliance.

§4208. Nutrient Management Fund

There is established the nonlapsing Nutrient Management 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 carry out the purposes of this Part.

§4209. Penalties

Failure to develop a nutrient management plan in accordance with section 4204 or to obtain a manure management permit in accordance with section 4205 constitutes a civil violation for which a forfeiture of up to \$1,000 plus up to \$250 per day for every day that the violation continues may be adjudged.

Failure to implement a nutrient management plan according to the requirements of section 4204 and the rules adopted pursuant to that section constitutes a civil violation for which a forfeiture of up to \$1000 with an additional penalty of up to \$250 per day for every day that the violation continues may be adjudged.

Failure to comply with the conditions set forth in a livestock operations permit or a variance constitutes a civil violation for which a forfeiture of up to \$1000 with an additional penalty of up to \$250 per day for

every day that the violation continues may be adjudged.

Winter spreading of manure in violation of section 4207 constitutes a civil violation for which a forfeiture of up to \$1000 per day for every day that spreading occurs may be adjudged.

Sec. 3. 12 MRSA §685-A, sub-§5, as amended by PL 1995, c. 386, §2, is further amended to read:

5. Considerations, application and exemptions. A land use standard may not deprive an owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of that standard. Year-round and seasonal single residences and operating farms in existence and use as of September 23, 1971, while so used, and new accessory buildings or structures or renovations of the buildings or structures that are or may be necessary to the satisfactory and comfortable continuation of these residential and farm uses are exempt from the requirements of section 685-B, subsection 1.

Land use standards adopted pursuant to this chapter for management districts may not limit the right, method or manner of cutting or removing timber or crops, the construction and maintenance of hauling roads, the operation of machinery or the erection of buildings and other structures used primarily for agricultural or commercial forest product purposes, including tree farms. Notwithstanding this subsection, a permit from the commission is required for roads covering a ground area of 3 acres or more constructed in management districts, unless those roads are constructed and maintained in accordance with the guidelines of the commission's Land Use Handbook, Section 6, "Erosion Control on Logging Jobs," or as revised. The commission may require a person constructing a road to notify the commission of the location of the road within 21 days. Notwithstanding this subsection, the commission may adopt rules in accordance with Title 7, section 4206 to regulate large concentrated animal feeding operations.

Land use standards adopted pursuant to this chapter must establish a minimum setback of 100 feet for all structures within a commercial sporting camp complex that are constructed solely for the housing of guests, including structures within a main sporting camp complex and an outpost camp. The standards must establish a minimum setback of 150 feet for all other structures within a sporting camp complex, including, but not limited to, a main lodge, a dining area, a workshop and a parking area.

In adopting district boundaries and land use standards, the commission shall give consideration to public and private planning reports and other data available to it,

and shall give weight to existing uses of land and to any reasonable plan of its owner as to its future use.

A permit from the commission is not required for the repair or maintenance of county-owned roads, bridges or culverts as long as the repair or maintenance is conducted in accordance with commission standards that pertain to these activities.

Sec. 4. 17 MRSA §2805, sub-§2, as amended by PL 1991, c. 395, §1, is further amended to read:

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.

Sec. 5. 17 MRSA §2805, sub-§5, ¶A, as enacted by PL 1991, c. 395, §3, is amended to read:

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;

Sec. 6. 38 MRSA §417-A, as enacted by PL 1991, c. 838, §20, is amended to read:

§417-A. Manure spreading

~~When~~ Notwithstanding Title 7, section 4207, when the ground is frozen, a person may not spread manure on agricultural fields within a great pond watershed unless this activity is in accordance with a conservation plan for that land on file with a state soil and water conservation district.

Sec. 7. Commissioner of Agriculture, Food and Rural Resources; budget. The Commissioner of Agriculture, Food and Rural Resources shall include the cost of implementing the provisions of the Maine Revised Statutes, Title 7, Part 10 in the Department of Agriculture, Food and Rural Resources' 2000-2001 biennial budget.

Sec. 8. Regulation of new and expanding concentrated animal feeding operations.

1. Study required; working groups. The State Planning Office within the Executive Department, the Department of Agriculture, Food and Rural Resources, the Department of Environmental Protection

and the Maine Land Use Regulation Commission shall study federal and state laws and regulations pertaining to large concentrated animal feeding operations and assess the potential impacts of large concentrated animal feeding operations. The Director of the State Planning Office or the director's designee shall coordinate the study process, facilitate meetings and provide staff for the study required under this subsection. The Director of the State Planning Office or the director's designee shall convene a working group or groups consisting of representatives of the Department of Agriculture, Food and Rural Resources, the Department of Environmental Protection, the Maine Land Use Regulation Commission, other state agencies as appropriate, representatives of farming interests and the general public. The study must address the impacts of large concentrated animal feeding operations on water quality, air quality, economic development and social issues related to these operations.

2. Report. The State Planning Office, the Department of Agriculture, Food and Rural Resources, the Department of Environmental Protection and the Maine Land Use Regulation Commission shall develop a report with findings based on the study conducted pursuant to subsection 1. No later than December 15, 1998, the report must be submitted to the joint standing committee of the Legislature having jurisdiction over agriculture matters by the Land and Water Resources Council after review by that council. The report must include recommendations for a permit process to regulate new large concentrated animal feeding operations. The recommended permit process must include provisions for a public hearing prior to issuing a permit for a new large concentrated animal feeding operation. The report must include legislation necessary to implement recommendations in the report.

3. Legislation. The joint standing committee of the Legislature having jurisdiction over agriculture matters may report out legislation to the First Regular Session of the 119th Legislature pertaining to the regulation of large concentrated animal feeding operations and to improve the implementation, administration and enforcement of the provisions of the Maine Revised Statutes, Title 7, Part 10.

Sec. 9. Moratorium on swine feeding operations. A person may not construct or operate a new swine feeding operation that confines and feeds 500 or more swine. For the purposes of this section, a "new swine feeding operation that confines and feeds 500 or more swine" means a lot or facility where 500 or more swine are confined and fed that was not operating as a swine feeding operation on March 1, 1998. This section is repealed 90 days after adjournment of the First Regular Session of the 119th Legislature.

Sec. 10. Report; nonpoint source pollution. By January 15, 2001, the Department of Agriculture, Food and Rural Resources shall develop a report, in cooperation with the Department of Environmental Protection, on the impact of agriculture on nonpoint source pollution. The report must include the following: an evaluation of progress made by farmers in implementing best management practices to eliminate access by livestock to streams or lakes for drinking water; an evaluation of practices to reduce soil erosion from cropland; and an evaluation of best management practices to reduce the runoff of nutrients from farmland. The evaluations must be based on the best information available and research as funds allow. This report must be submitted to the joint standing committees of the Legislature having jurisdiction over natural resources matters and agriculture matters by the Land and Water Council after review by the council.

The joint standing committee of the Legislature having jurisdiction over agriculture matters may report out legislation to the First Regular Session of the 120th Legislature regarding measures to reduce the impact of agriculture on nonpoint source pollution.

Sec. 11. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

1998-99

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Office of Agricultural, Natural and Rural Resources

All Other	\$500
Allocates funds as a base allocation to authorize expenditures from the Nutrient Management Fund.	

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 31, 1998.

CHAPTER 643

H.P. 1397 - L.D. 1950

An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and Changes to Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1998 and June 30, 1999

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. Supplemental appropriations from the General Fund. There are appropriated from the General Fund for the fiscal years ending June 30, 1998 and June 30, 1999, to the departments listed, the following sums.

	1997-98	1998-99
ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF		
Office of the Commissioner - Administrative and Financial Services		
Personal Services	\$768	
Provides for the appropriation of funds to correct the omission of a longevity payment from Public Law 1997, chapter 24, Part A. This increase will be offset by the deappropriation of salary savings from within the Bureau of Revenue Services.		
Administration - Human Resources		
Positions - Legislative Count	(-1,000)	(-1,000)
Personal Services	(21,300)	(79,220)
Provides for the deappropriation of funds through the transfer of the Director of Human Resources Administration position from the Bureau of Human Resources to the Bureau of Accounts and Control where the		