

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND NINETEENTH LEGISLATURE
SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

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
2000

CHAPTER 723

H.P. 1861 - L.D. 2596

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

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

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 nutrients on land on which manure is utilized or stored. The plan must establish minimum distances between manure storage, stacking and spreading areas and property lines and surface water based on site-specific factors. The plan must provide for manure storage for a minimum of 180 days. A nutrient management plan prepared in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3. 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;

F. Additional information established through rulemaking;

G. Site-specific dates recommended for the spreading of manure and spraying or irrigation of liquid manure. In compliance with section 4207, the plan may not recommend spreading between December 1st of a calendar year and March 15th of the following calendar year; and

H. A recommended timetable for implementing the plan.

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

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

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

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

B. "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial 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 to a farm or farm operation that materially changes the conditions or nature of the farm operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm. Nothing in this paragraph affects the applicability of any of the other provisions of this section.

~~**3. Change in land use.** A farm or farm operation shall not be considered a public or private nuisance if 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 and, before the change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.~~

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

4. Application; municipal ordinances. This section does not affect the application of state and federal laws. After the effective date of this subsection, a municipality must provide the Commissioner of Agriculture, Food and Rural Resources with a copy of any proposed ordinance that impacts farm operations.

The clerk of the municipality or a municipal official designated by 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.

5. Complaint resolution. The commissioner shall investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of waste products, ground and surface water pollution and insect infestations. In cases of insect infestations not arising from agricultural activities, when the State Entomologist believes 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 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 ~~adopt~~ 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.

8. Rules. The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act to interpret and implement this section.

9. Educational outreach. The Commissioner of Agriculture, Food and Rural Resources shall conduct an educational outreach program for the agricultural community to increase awareness of the provisions of this section and the currently adopted best management practices of the Department of Agriculture, Food and Rural Resources. The commissioner shall inform the public about the provisions of this section, the complaint resolution process adopted by the department and state policy with respect to preservation and protection of agricultural and natural resources.

See title page for effective date.

CHAPTER 724

H.P. 1893 - L.D. 2634

An Act to Implement the Recommendations of the Joint Standing Committee on Agriculture, Conservation and Forestry Relating to Review of the State Board of Pesticides Control Under the State Government Evaluation Act

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

Sec. 1. 22 MRSA §1471-M, sub-§7, as enacted by PL 1997, c. 389, §1, is amended to read:

7. Data collection; annual report. The board shall implement a system of record keeping, reporting, data collection and analysis that provides information on the quantity of product and brand names of pesticides sold. The board, in cooperation with the University of Maine Cooperative Extension Service, shall study ways to improve pesticide information data bases and to optimize the useful analysis of reported information.

No later than October 1, 1998, and each year thereafter, the board shall publish an annual pesticides report containing the quantity of product, sorted by the name and United States Environmental Protection Agency registration number, of all pesticides sold in the prior year, with the data further sorted by sector of use wherever possible, except that the pesticides report under this subsection is not required in the years 2000 and 2001.

Sec. 2. State Board of Pesticides Control; progress report. During the First Regular Session of the 120th Legislature, the State Board of Pesticides Control shall report to the joint standing committee of the Legislature having jurisdiction over agricultural matters on the board's discussions regarding data collection and progress in developing methods to increase the reliability and usefulness of data collected on pesticide use. The joint standing committee of the Legislature having jurisdiction over agricultural matters may report out legislation to the Second Regular Session of the 120th Legislature regarding data collection and reporting of pesticide use.

See title page for effective date.

CHAPTER 725

S.P. 1059 - L.D. 2650

An Act to Clarify the Enforcement Authority of the Manufactured Housing Board

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

Whereas, the Attorney General has recently opined that the manufactured housing law provides for the preemption of state or other political subdivision codes, standards, rules or regulations under certain circumstances; and