

MAINE STATE LEGISLATURE

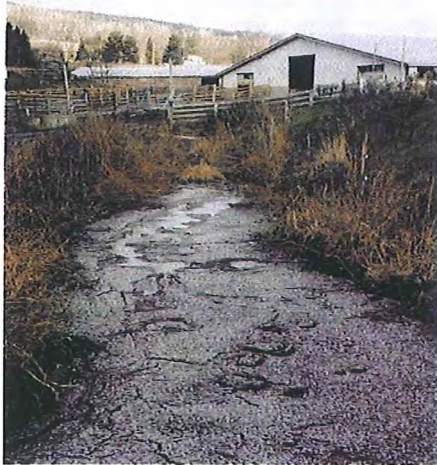
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**REPORT TO THE MAINE LEGISLATURE
On the
IMPLEMENTATION OF THE NUTRIENT MANAGEMENT
PROGRAM**



February 15, 2012

Maine Department of Agriculture, Food & Rural Resources

Division of Agricultural Resource Development

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Introduction and History

In accordance with 7 MRS §4213, this report is presented to the Joint Standing Committee on Agriculture, Conservation and Forestry. This report for 2012 highlights certain elements and achievements of the Nutrient Management Program during 2011. Previous reports, which describe the cumulative development and accomplishments of the program over the years, are available upon request.

The Nutrient Management Law, originally passed in 1998, required the Department of Agriculture to establish rules for conducting a Nutrient Management Program and to adopt standards for nutrient management plans. These actions were completed by December 15, 1998 and were ratified by the Legislature the following spring. Amendments to the Nutrient Management Law were made in 1999, 2001 and again in 2002. These changes were necessary as the development of the program required additions to the rules to describe specific processes or simply to correct or change the existing rules to better reflect how the program was working in reality.

After the rules were approved, the Department began implementation of the various elements of the program based on the timeline set in legislation. The primary areas of implementation were the training and certification program for nutrient management planning specialists, establishment of the Nutrient Management Review Board, issuance of variances, enforcement of the winter spreading ban, and the establishment of a permitting program. In addition, it was necessary to develop a data management system, to identify funding sources for manure storages, and to negotiate agreements with the Maine Department of Environmental Protection (DEP) about how the Nutrient Management Program would interface with DEP programs that had overlapping or similar jurisdictions. All of these important components of the program have been successfully addressed, and ongoing efforts continue to identify areas of the program requiring modifications to meet future goals.

Nutrient Management Plans

The purpose of the Nutrient Management Program is to address non-point source pollution from farms, as well as from “point source” concentrated animal feeding operations (CAFOs), by promoting best management practices (BMPs) on Maine's farms, and by ensuring the implementation of those BMPs through a variety of efforts. Since the inception of the program, there have been 750 nutrient management plans developed. During 2011, 24 plans were developed for new farming operations covering 1504 acres and 1100 animal units, and 47 plans were updated for existing operations covering 11,518 acres and 5886 animal units.

The development and implementation of nutrient management plans requires specialized technical assistance and knowledge. Since 1998, there have been 182 individuals in Maine who have qualified as Certified Nutrient Management Planning Specialists. However, most of these individuals are not available to prepare and certify nutrient

management plans at this time. Of the 73 individuals currently certified, 15 of them are commercial/public planners and generally are available to certify plans. These individuals include both University of Maine Cooperative Extension (UMCE) personnel and private consultants. Twenty-nine USDA Natural Resources Conservation Service (NRCS) staff potentially are available to certify plans on a limited basis, while twenty-two qualified planners are not certifying plans. Seven private planners are eligible to certify only their own plans.

The Department's long-standing federal partner for providing technical support to farms, NRCS, has moved to the privatization of technical assistance in addition to providing it by their own employees in some situations. Private Technical Service Providers (TSPs) have been available for writing comprehensive nutrient management plans (CNMPs), and for other projects, with funding from USDA's Environmental Quality Incentives Program (EQIP). The formula for providing this cost share has changed to a fixed amount rather than a percent of cost approach.

Nutrient Management Planner Training and Certification

During 2011, six major training events (three were multiple days) were approved by the Department, for a total of 17 nutrient management recertification credits offered. Thirty-eight individuals received a total of 81 credits. These programs were held either in conjunction with a Soil and Water Conservation District, the Maine Compost Team, the UMCE, NRCS, or independently by the Department. Notable training events included a *Transitioning to No-till Corn Silage Production* workshop, a two-day training event sponsored by NRCS, a two-day training event sponsored by UMCE, and six presentations given at the Agricultural Trades Show in Augusta on a variety of subjects. Certain planners, who are certified crop advisors or certified professional agronomists, receive recertification credits through their affiliation with the American Society of Agronomy.

Nutrient Management Grant and Loan Programs

Probably one of the more significant aspects of the Nutrient Management Law is the financial burden placed on farmers with its implementation. To mitigate this impact, which is partially the result of the winter spreading ban which requires farmers to store manure during the winter, a Nutrient Management Grant Program was established to help farmers comply with the Nutrient Management Law. Subsequently, in the year 2000, the 119th Legislature appropriated \$2.5 million to provide farmers with funding for manure storage and handling systems. In 2002 and again in 2003, voters approved an additional \$2.0 million and \$1.0 million, respectively, for funding additional projects. To date, 119 farms in 12 counties have been awarded grants on a cost-share basis. Another grant program, Phase II Supplemental, was initiated in October 2006. Additional grant funds are not available from the Department through the Nutrient Management Program at this time. Revisions to Maine's tax laws allow farmers to exempt manure storage structures from property taxes, as well as to take a sales tax exemption on materials used in construction of manure storage or handling systems.

The Nutrient Management Loan Program, funded primarily by the U. S. Environmental Protection Agency (EPA), provides farmers with low-interest (2%) loans (plus fees) when grant funds must be supplemented to cover the cost of a project, or when grant funds are not available for a project. Changes to this program that would allow funding for resolving a broader array of environmental issues were proposed in 2006, and were finally approved by EPA in 2011. Rule and other required changes related to the adoption and utilization of these new practices are in progress.

Livestock Operations Permits

Concentrated Animal Feeding Operations (CAFOs) must comply with federal and state regulations and, if required, obtain a Livestock Operations Permit (LOP), and perhaps a Maine Pollutant Discharge Elimination System Permit (MEPDES) from the Department of Agriculture and the Department of Environmental Protection (DEP), respectively. Seven farms had originally been inspected and issued Provisional Livestock Operations Permits when the Nutrient Management Program was initiated. Since that time, 20 farms have been issued either finalized or provisional LOPs; three finalized LOPs and one provisional LOP were issued during 2011. One LOP application currently is undergoing a review, one application is under development, and three farms are being evaluated by the Department to determine their requirement to apply for an LOP. Currently, 14 farms hold finalized LOPs, and one farm has a provisional LOP pending an update of its nutrient management plan. Seven farms currently hold MEPDES permits; no farms required MEPDES permitting during 2011.

Three Maine farms underwent CAFO inspections in late 2005 and 2006 and three more were inspected in 2008 by EPA, DEP and the Maine Department of Agriculture. Two more CAFO inspections on Maine farms were conducted by EPA in 2009. The farms inspected in 2008 included one poultry farm and two large dairy operations, while the 2009 inspections consisted of one dairy and one poultry farm. During the fall of 2011, DEP and Department staff conducted MEPDES inspections on four large dairy farms. In 2011, there were no EPA CAFO inspections in Maine. There currently are seven CAFOs identified in Maine and, upon evaluation, several more farms likely will be classified as CAFOs because of expansion of their operations.

Winter Manure Spreading Ban and Variance

The ban on winter manure spreading is effective December 1st of a calendar year through March 15th of the following calendar year. This restricts spreading during the time of the year when the potential for nutrients to reach water bodies through run off is at its greatest.

During the winter ban period of 2011-2012, the Department granted 35 spreading requests, with two farms granted one extension each, and one farm receiving two extensions. These variances were approved for a limited time to allow the manure levels in storage pits to be lowered to ensure that the pit would have sufficient capacity to get

through the winter. Field spreading of manure was delayed during the fall of 2011 because of excessive rainfall and soft field conditions.

Rulemaking

An extensive revision to the Chapter 211 *Disposal of Animal Carcasses* Rule was undertaken in 2011, with final adoption scheduled for early 2012.

Nutrient Management Review Board

The Nutrient Management Review Board is a seven-member Board, with each member representing a different aspect of the agricultural community and the public. The Nutrient Management Review Board's duties include approving rule changes, hearing appeals on permit or certification decisions made by the Commissioner, and making recommendations to the Commissioner on issues pertaining to nutrient management. The Board is staffed by the Department's Nutrient Management Program Coordinator.

Agricultural Compliance Program

The Nutrient Management Program works in very close collaboration with the Agricultural Compliance Program. The Agricultural Compliance Program investigates and addresses all agriculturally-based complaints including odors, insects, improper manure handling, water contamination, improper disposal of farm wastes, cull potatoes and animal carcasses. The Department of Agriculture also cooperates with other agencies when complaints are associated with other regulated materials and activities on the farm. The Nutrient Management Program, in concert with the Agricultural Compliance Program, assists new operations with developing best management practices (BMPs), and works with municipalities and the agricultural community to address issues associated with the Right-to-Farm Law and municipal ordinances. As a part of the effort to provide education to the public about the compliance program, the Department has developed a brochure that explains how the program is structured and the types of activities that are involved. This brochure has been distributed at the Agricultural Trades Show and at a number of other public venues.

Municipal Ordinances

Every municipality has a mandatory shoreland-zoning ordinance, which regulates activities within the shoreland zone (including agriculture). A code enforcement officer enforces the ordinance. Many municipalities have other ordinances which regulate agriculture outside the shoreland zone. A municipality that is proposing to adopt an ordinance that could impact agriculture by restricting the use of BMPs is required to send a copy of the ordinance to the Department for review. Subsequent to this review, the Department notifies the municipality with its findings regarding the potential impact of the proposed ordinance on agriculture. The Department, therefore, is aware that some ordinances could make it very hard for farmers to have a sustainable agricultural operation if an ordinance is too stringent (e.g., number of animal units allowed within a

specific area), and works with municipalities to resolve any issues. In 2011, the Department conducted reviews of four town ordinances under the “Right-to-Farm Law”.

Implementation/Ongoing Efforts

The implementation of the Nutrient Management Program is being accomplished through a partnership approach. Many players have roles in making the various pieces of the program work. The Department of Agriculture has, of course, taken a leadership role in developing and coordinating the different components of the program. The University of Maine Cooperative Extension has had a primary role in conducting certification training workshops for consultants, farmers and agency people. They also worked in concert with the Department to develop the outline of a nutrient management plan and guidance materials to assist planners who develop plans. Moreover, our long-standing federal partner for providing technical support to farms, NRCS, has moved to the privatization of technical assistance in addition to providing it by their own employees in some situations. Private technical service providers (TSPs) have been available for writing CNMPs, and for other projects, with funding from USDA’s EQIP program. A new NRCS initiative, the Nutrient Management Conservation Activity Plan Program, will be another opportunity for certain crop and livestock farms to obtain partial funding for development of a plan. The formula for providing this cost share has changed to a fixed amount rather than a percent of cost approach.

Conclusions and Future Challenges

One of the more serious challenges facing the Department and Maine agriculture is the shrinking pool of technical specialists available to apply conservation and nutrient management practices to the land. Our partner, NRCS, on whom farmers, landowners, soil and water conservation districts and others have relied for expertise and assistance, has incurred personnel attrition as a result of retirements and reduced funding, which is a loss of technical expertise vital for guiding and applying conservation projects to the land. All of these situations have left NRCS with diminished ability to provide technical assistance to farms that are not locked into EQIP contracts or certain other projects. Yet, there remain a myriad of specialized NRCS programs that benefit the farming community with technical assistance and funding for meaningful projects.

The University of Maine Cooperative Extension, another valuable partner essential for providing expertise in a myriad of disciplines to landowners, to this Department and others, also is experiencing a fate similar to that of NRCS. The local soil and water conservation districts, from which considerable expertise is available to farmers and others, generally are dependent upon interaction with NRCS, UMCE and other organizations to have viable outreach programs, but many soil and water conservation districts do not have adequate financing or staff to expand their programs significantly at this time.

Nevertheless, the Department must continue to be proactive by providing innovative leadership and by developing the capability of meeting expanding, essential needs not achieved by other entities.

Another conclusion drawn from an overview of the Nutrient Management Program is that the program has come a long way since its inception in 1998. Today, nutrient management plans are a normal part of doing business for many farms. Maine farmers and the Department have experienced two update and renewal cycles, and are beginning the third generation of nutrient management plans. Larger farms have accepted the need for Livestock Operations Permits and the process for issuing them has been perfected. Farmers realize that the Nutrient Management Rules were developed by Maine farmers and others who understand the problems faced by Maine agriculture, and that these rules specifically relate to Maine's landscape and climate. This program has proven to be beneficial to farmers (and to others) both economically and environmentally. The Department and DEP have developed a good working relationship when it comes to issuing MEPDES permits, and on many other matters. The Nutrient Management Review Board has participated in rulemaking, handled appeals from several quarters and managed the application process for \$5.5 million in Nutrient Management Grants. In short, the program has moved from an idea to an established and maturing program.