S T A T E O F N E W Y O R K

4111

2009-2010 Regular Sessions

I N A S S E M B L Y

January 30, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the soil and water conservation districts law, in relation to establishing the livestock nutrient management program

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article III and sections 13, 14, and 15 of the soil and water conservation districts law are renumbered article V and sections 40, 41, and 42 and a new article III is added to read as follows:

ARTICLE III

LIVESTOCK NUTRIENT MANAGEMENT PROGRAM

SECTION 20. LEGISLATIVE FINDINGS AND DECLARATIONS.
21. DEFINITIONS.
22. CURRENT LIVESTOCK OPERATIONS.
23. NUTRIENT MANAGEMENT PROGRAM.
24. CONTENTS AND CRITERIA.
25. EFFECT OF PERMIT.

S 20. LEGISLATIVE FINDINGS AND DECLARATIONS. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT ADDITIONAL MEASURES TO ADDRESS THE PROBLEM OF NON-POINT SOURCE WATER POLLUTION ARE NEEDED TO ACCOMPLISH THE GOALS OF THE FEDERAL WATER POLLUTION CONTROL ACT (P1 92-500, TITLE I. SECTION 101) "TO RESTORE AND MAINTAIN THE CHEMICAL, PHYSICAL, AND BIOLOGICAL INTEGRITY OF THE NATION'S WATERS". THE LEGISLATURE FURTHER FINDS THAT A SIGNIFICANT PORTION OF NON-POINT SOURCE WATER POLLUTION IN NEW YORK IS A RESULT OF RUNOFF OF EXCESS NUTRIENTS FROM CERTAIN FARMING PRACTICES. IT IS THE PURPOSE OF THIS ARTICLE TO STEM THE FLOW OF EXCESS NUTRIENTS INTO THE WATERS OF THE STATE BY REQUIRING THE DEVELOPMENT AND IMPLEMENTATION OF NUTRIENT MANAGEMENT PLANS FOR FARMS THAT HANDLE LARGE AMOUNTS OF ANIMAL MANURE.

S 21. DEFINITIONS. AS USED IN THIS ARTICLE, THE TERM:

1. "ANIMAL UNIT" MEANS ONE THOUSAND POUNDS OF LIVESTOCK.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD07349-01-9

2. "BEST MANAGEMENT PRACTICES" MEANS THOSE GUIDELINES AND STANDARDS OUTLINED IN THE CORNELL COOPERATIVE EXTENSION HANDBOOK ENTITLED "FIELD CROPS AND SOILS HANDBOOK, CODE 125, CUFCHNBK" WHICH ADDRESS LIVESTOCK MANURE MANAGEMENT.

3. "DISTRICT OFFICE" MEANS THE COUNTY DISTRICT OFFICE OF THE UNITED STATES DEPARTMENT OF AGRICULTURE'S SOIL CONSERVATION SERVICE.

4. "LIVESTOCK" MEANS DAIRY CATTLE, BEEF CATTLE, SWINE, DUCK, HORSE, TURKEY, AND CHICKEN.

5. "LIVESTOCK OPERATION" MEANS AN OWNER ENGAGED IN THE BUSINESS OF RAISING LIVESTOCK WHERE ANIMAL POPULATIONS EXCEED ONE THOUSAND ANIMAL UNITS.

6. "MANURE" MEANS LIVESTOCK EXCRETA WITH FEED, BEDDING, OR OTHER MATERIALS.

7. "MANURE MANAGEMENT PERMIT" MEANS THE DOCUMENT ISSUED TO AN OWNER BY THE DEPARTMENT WHICH AUTHORIZED THE OWNER TO APPLY MANURE ON AGRICULTURAL FIELDS AS FERTILIZER, SUBJECT TO THE APPROVAL OF A NUTRIENT MANAGEMENT PLAN BY THE DISTRICT OFFICE.

8. "NUTRIENT MANAGEMENT PLAN" MEANS THE DOCUMENT WHICH ACCOMPANIES AN APPLICATION FOR A MANURE MANAGEMENT PERMIT AND DESCRIBES HOW THE OWNER OF A LIVESTOCK OPERATION WILL MANAGE AND DISPOSE OF MANURE IN SUCH A WAY AS TO PREVENT POLLUTION OF GROUND AND SURFACE WATERS.

9. "NUTRIENT MANAGEMENT PROGRAM" MEANS THE SCHEDULE OF ACTIVITIES UNDERTAKEN OR TO BE UNDERTAKEN BY A PERSON REQUIRED TO OBTAIN A MANURE MANAGEMENT PERMIT UNDER THIS ARTICLE FOR THE MINIMIZATION OF POINT AND NON-POINT SOURCE POLLUTION TO GROUND AND SURFACE WATERS THROUGH MANAGEMENT OF ANIMAL WASTE AND FERTILIZER IN ACCORDANCE WITH THE CRITERIA SET FORTH IN SECTION TWENTY-FOUR OF THIS ARTICLE.

10. "NUTRIENT MANAGEMENT PLAN REVIEW" MEANS A REVIEW OF A NUTRIENT MANAGEMENT PLAN TO ENSURE THAT THE PLAN CONTAINS THE INFORMATION REQUIRED TO BE SUBMITTED UNDER THIS ARTICLE AND THAT CALCULATIONS CONTAINED IN THE PLAN ON RATES OF LAND APPLICATION OF NUTRIENTS ARE MADE IN ACCORDANCE WITH THE CRITERIA SET FORTH IN THE TECHNICAL GUIDE.

11. "OWNER" MEANS ALL INDIVIDUALS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES, CORPORATIONS, OR OTHER ENTITIES HAVING POSSESSION OR CONTROL OF, OR TITLE TO A LIVESTOCK OPERATION.

12. "PERMITTED ACTIVITY" MEANS ALL MANURE MANAGEMENT ACTIVITIES WHICH ARE AUTHORIZED TO BE UNDERTAKEN IN A MANURE MANAGEMENT PERMIT PURSUANT TO AN APPROVED NUTRIENT MANAGEMENT PLAN.

13. "TECHNICAL GUIDE" MEANS THE "FIELD OFFICE TECHNICAL GUIDE" PUBLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE'S SOIL CONSERVATION SERVICE, INCLUDING ALL MODIFICATIONS MADE BY THE DISTRICT OFFICES.

S 22. CURRENT LIVESTOCK OPERATIONS. 1. LIVESTOCK OPERATIONS WITH ONE THOUSAND OR MORE ANIMAL UNITS MUST COMPLY WITH THE REQUIREMENTS OF THE NUTRIENT MANAGEMENT PROGRAM SET FORTH IN SECTION TWENTY-THREE OF THIS ARTICLE.

2. THE DEPARTMENT, BASED ON THE RECOMMENDATION OF THE DISTRICT OFFICE, MAY REQUIRE LIVESTOCK OPERATIONS WITH LESS THAN ONE THOUSAND ANIMAL UNITS TO COMPLY WITH THE REQUIREMENTS OF SECTIONS TWENTY-THREE AND TWENTY-FOUR OF THIS ARTICLE IF IT IS DETERMINED THAT: (A) THE STORAGE, HANDLING, OR DISPOSAL OF MANURE OR THE APPLICATION OF FERTILIZER BY THE OPERATION IS IN VIOLATION OF BEST MANAGEMENT PRACTICES; OR (B) IF SUCH PRACTICES ARE FOUND TO CONTRAVENE WATER QUALITY REGULATIONS SET FORTH IN NYCRR TITLE 6, CHAPTER X, PARTS 700-705 OR DRINKING WATER STANDARDS SET FORTH IN PART 5, SUBPART 5-1 OF THE STATE SANITARY CODE.

S 23. NUTRIENT MANAGEMENT PROGRAM. 1. THE STATE SOIL CONSERVATION SERVICE SHALL ADOPT A STANDARDIZED APPLICATION FORM FOR A MANURE MANAGEMENT PERMIT, WHICH INCLUDES THE BASELINE CRITERIA FOR A NUTRIENT MANAGEMENT PLAN, AND SUBMIT THIS FORM TO ALL DISTRICT OFFICES AND TO EACH REGIONAL OFFICE OF THE DEPARTMENT.

2. EACH DISTRICT OFFICE SHALL IDENTIFY ALL LIVESTOCK OPERATIONS WITHIN ITS JURISDICTION AND NOTIFY EACH LIVESTOCK OPERATION LISTED THAT A NUTRIENT MANAGEMENT PLAN MUST BE COMPLETED AND SUBMITTED TO THE DISTRICT OFFICE. THE LOCAL DISTRICT OFFICE AGENT SHALL IMMEDIATELY NOTIFY THE REGIONAL OFFICE OF THE DEPARTMENT AT ANY TIME HE OR SHE BECOMES AWARE OF A VIOLATION OF BEST MANAGEMENT PRACTICES OR SUSPECTS A CONTRAVENTION OF THE WATER QUALITY REGULATIONS.

3. ALL LIVESTOCK OPERATIONS NOTIFIED PURSUANT TO SUBDIVISION TWO OF THIS SECTION MUST SUBMIT AN APPLICATION FOR A MANURE APPLICATION PERMIT ACCOMPANIED BY A NUTRIENT MANAGEMENT PLAN TO THE DISTRICT OFFICE AND THE REGIONAL OFFICE OF THE DEPARTMENT.

4. THE DISTRICT OFFICE SHALL CONDUCT A NUTRIENT MANAGEMENT PLAN REVIEW AND APPROVE, OR APPROVE WITH MODIFICATIONS, ALL NUTRIENT MANAGEMENT PLANS SUBMITTED. UPON APPROVAL, THESE PLANS MUST BE FILED WITH EACH REGIONAL OFFICE OF THE DEPARTMENT.

5. EACH REGIONAL OFFICE OF THE DEPARTMENT SHALL ISSUE MANURE MANAGEMENT PERMITS TO OWNERS ENGAGED IN LIVESTOCK OPERATIONS WHERE NUTRIENT MANAGEMENT PLANS HAVE BEEN APPROVED BY THE DISTRICT OFFICE. UPON RECEIPT OF A MANURE MANAGEMENT PERMIT, THE OWNER MUST BE IN COMPLIANCE WITH ALL REQUIREMENTS OF SUCH PERMIT. MANURE MANAGEMENT PERMITS SHALL SPECIFY THOSE PERMITTED ACTIVITIES WHICH AN OWNER MAY ENGAGE IN WHEN APPLYING MANURE AS FERTILIZER TO AGRICULTURAL FIELDS. PERMITTED ACTIVITIES SHALL REFLECT THE MANAGEMENT PRACTICES SET FORTH IN THE APPROVED NUTRIENT MANAGEMENT PLAN FOR EACH LIVESTOCK OPERATION.

S 24. CONTENTS AND CRITERIA. 1. THE NUTRIENT MANAGEMENT PLAN SHALL INCLUDE THE FOLLOWING INFORMATION:

(A) THE NUMBER OF ANIMAL UNITS OF THE LIVESTOCK OPERATION ON THE LAND TRACT TO BE PERMITTED.

(B) THE AMOUNT OF MANURE EXPECTED TO BE GENERATED FROM THE RAISED LIVESTOCK ANNUALLY.

(C) A STATEMENT OF THE PLANNED DISPOSITION OF THE MANURE AMOUNT, INDICATED UNDER PARAGRAPH (B) OF THIS SUBDIVISION, TO BE GENERATED BY THE LIVESTOCK. SUCH STATEMENT SHALL INCLUDE, IF APPLICABLE, THE FOLLOWING: (I) THE MEANS, MANNER, AND FACILITIES (INCLUDING STORAGE CAPACITY) PROPOSED TO BE UTILIZED FOR STORAGE OF MANURE TO BE GENERATED; (II) THE PROPOSED TRACTS OF LAND WHICH WILL RECEIVE FIELD APPLICATIONS OF THE GENERATED MANURE AND THE AMOUNTS AND PERIODS OF MANURE APPLICATION ON THOSE TRACTS OF LAND; (III) THE FIELD CROPS EXPECTED TO BE GROWN ON SUCH LAND TRACTS; (IV) EVIDENCE, USING THE FORMULAS AND CALCULATIONS CONTAINED IN THE TECHNICAL GUIDE, THAT THE AMOUNT OF MANURE GENERATED WILL NOT EXCEED THE MAXIMUM QUANTITIES OF MANURE FOR PROPER STORAGE AND EFFECTIVE NUTRIENT SUSTENANCE OF CROPS IN THE FACILITIES AND LAND TRACTS AND FOR THE CROPS, OR IF SUCH EXCESS IS INDICATED, THE MANNER AND LOCATIONS IN WHICH SUCH EXCESS WILL BE DISPOSED AND EVIDENCE THAT DISPOSAL OF THE EXCESS IN SUCH MANNER AND AT SUCH LOCATIONS WILL NOT CAUSE POLLUTION OR THREATEN TO CAUSE POLLUTION TO GROUND OR SURFACE WATERS; AND (V) DISPOSAL, INCLUDING MILKHOUSE WASTE, MEDICAL WASTE, HUMAN SEPTIC, CHEMICALS, AND DEAD LIVESTOCK.

(D) A SCALED MAP OR MAPS INDICATING THE LOCATION OR EXPECTED LOCATIONS OF ALL STRUCTURES WHERE LIVESTOCK ARE OR WILL BE RAISED AND ALL STRUCTURES AND FIELDS WHERE MANURE IS PROPOSED TO BE STORED OR APPLIED, IN

SUPPORT OF THE STATEMENT SUBMITTED PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION. SUCH MAP OR MAPS SHALL INCLUDE SUFFICIENT INFORMATION ON THE LOCATION OF THE LAND TRACT OR TRACTS AND FACILITIES AS WILL REASONABLY ALLOW THE DISTRICT OFFICE TO LOCATE SUCH TRACT OR TRACTS AND FACILITIES.

(E) IF ANY LAND INDICATED FOR RECEIPT OF MANURE APPLICATION OR DISPOSAL IS OWNED BY A PERSON OTHER THAN THE LIVESTOCK OPERATION, A WRITTEN CONSENT FROM SUCH OWNER THAT APPLICATION OR DISPOSAL OF MANURE BY THE LIVESTOCK OPERATION IS PERMITTED ON SUCH LANDS.

2. THE NUTRIENT MANAGEMENT PLAN SHALL, AT A MINIMUM, COMPLY WITH THE CRITERIA SET FORTH IN THE MOST RECENT DISTRICT OFFICE TECHNICAL GUIDE. EXISTING NUTRIENT MANAGEMENT PLANS FOR LIVESTOCK OPERATIONS, AS DEFINED BY THIS ARTICLE, MUST BE RESUBMITTED TO THE DISTRICT OFFICE FOR FORMAL APPROVAL BASED ON THE CONTENTS AND CRITERIA OF THE NUTRIENT MANAGEMENT PLAN SET FORTH IN THIS ARTICLE IN ORDER TO OBTAIN A MANURE MANAGEMENT PERMIT.

3. THE ACTIVITIES AND FACILITIES PROPOSED TO BE UNDERTAKEN, CONSTRUCTED, OR OPERATED IN THE NUTRIENT MANAGEMENT PLAN BY THE LIVESTOCK OPERATION SHALL COMPLY WITH ALL OTHER STATE AND LOCAL LAWS, REGULATIONS, OR ORDINANCES.

S 25. EFFECT OF PERMIT. 1. A MANURE MANAGEMENT PERMIT GRANTED PURSUANT TO THIS ARTICLE SHALL ENTITLE THE APPLICANT LIVESTOCK OPERATION TO RAISE LIVESTOCK IN SUCH SPECIES AND NUMBERS AND ON SUCH LAND TRACTS AS ARE INDICATED ON THE PERMIT. SUCH PERMIT SHALL BE EFFECTIVE UNTIL THE DISTRICT OFFICE OR THE REGIONAL OFFICE OF THE DEPARTMENT DETERMINES THAT THE PERMITTED OPERATION IS FOUND TO BE IN VIOLATION OF THIS ARTICLE OR ANY OTHER LAW OR REGULATION OF THE DEPARTMENT IN THE GENERATION, STORAGE, HANDLING, OR DISPOSITION OF MANURE.

2. ALL MANURE APPLICATION PERMITS ISSUED BY THE DEPARTMENT SHALL BE REVIEWED BIENNIALLY BY THE DISTRICT OFFICE IN ORDER TO DETERMINE WHETHER OR NOT A LIVESTOCK OPERATION IS IN COMPLIANCE WITH ALL REQUIREMENTS OF THE PERMIT.

3. REVISED MANURE MANAGEMENT PERMIT APPLICATIONS AND NUTRIENT MANAGEMENT PLANS SHALL BE RESUBMITTED PRIOR TO THE FOLLOWING EVENTS:

(A) THE HERD SIZE OF A LIVESTOCK OPERATION INCREASES BY TEN PERCENT OR MORE FOR A PERIOD OF NINETY DAYS OR MORE;

(B) THE INGREDIENTS OF THE FEED MATERIAL CHANGE FOR MORE THAN FORTY-FIVE DAYS IN ANY ONE YEAR PERIOD FROM THAT DESCRIBED IN THE ORIGINAL NUTRIENT MANAGEMENT PLAN; OR

(C) CHANGING THE OWNERSHIP OF AN EXISTING LIVESTOCK OPERATION.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made on or before such effective date.