

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:

1 Section 1. Article III and sections 13, 14, and 15 of the soil and
2 water conservation districts law are renumbered article V and sections
3 40, 41, and 42 and a new article III is added to read as follows:

4 ARTICLE III

5 LIVESTOCK NUTRIENT MANAGEMENT PROGRAM

6 SECTION 20. LEGISLATIVE FINDINGS AND DECLARATIONS.

7 21. DEFINITIONS.

8 22. CURRENT LIVESTOCK OPERATIONS.

9 23. NUTRIENT MANAGEMENT PROGRAM.

10 24. CONTENTS AND CRITERIA.

11 25. EFFECT OF PERMIT.

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

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

25 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.

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

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

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

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

12 6. "MANURE" MEANS LIVESTOCK EXCRETA WITH FEED, BEDDING, OR OTHER MATE-
13 RIALS.

14 7. "MANURE MANAGEMENT PERMIT" MEANS THE DOCUMENT ISSUED TO AN OWNER BY
15 THE DEPARTMENT WHICH AUTHORIZED THE OWNER TO APPLY MANURE ON AGRICUL-
16 TURAL FIELDS AS FERTILIZER, SUBJECT TO THE APPROVAL OF A NUTRIENT
17 MANAGEMENT PLAN BY THE DISTRICT OFFICE.

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

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

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

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

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

39 13. "TECHNICAL GUIDE" MEANS THE "FIELD OFFICE TECHNICAL GUIDE"
40 PUBLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE'S SOIL CONSER-
41 VATION SERVICE, INCLUDING ALL MODIFICATIONS MADE BY THE DISTRICT
42 OFFICES.

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

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

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

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

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

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

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

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

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

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

36 (C) A STATEMENT OF THE PLANNED DISPOSITION OF THE MANURE AMOUNT, INDI-
37 CATED UNDER PARAGRAPH (B) OF THIS SUBDIVISION, TO BE GENERATED BY THE
38 LIVESTOCK. SUCH STATEMENT SHALL INCLUDE, IF APPLICABLE, THE FOLLOWING:

39 (I) THE MEANS, MANNER, AND FACILITIES (INCLUDING STORAGE CAPACITY)
40 PROPOSED TO BE UTILIZED FOR STORAGE OF MANURE TO BE GENERATED; (II) THE
41 PROPOSED TRACTS OF LAND WHICH WILL RECEIVE FIELD APPLICATIONS OF THE
42 GENERATED MANURE AND THE AMOUNTS AND PERIODS OF MANURE APPLICATION ON
43 THOSE TRACTS OF LAND; (III) THE FIELD CROPS EXPECTED TO BE GROWN ON SUCH
44 LAND TRACTS; (IV) EVIDENCE, USING THE FORMULAS AND CALCULATIONS
45 CONTAINED IN THE TECHNICAL GUIDE, THAT THE AMOUNT OF MANURE GENERATED
46 WILL NOT EXCEED THE MAXIMUM QUANTITIES OF MANURE FOR PROPER STORAGE AND
47 EFFECTIVE NUTRIENT SUSTENANCE OF CROPS IN THE FACILITIES AND LAND TRACTS
48 AND FOR THE CROPS, OR IF SUCH EXCESS IS INDICATED, THE MANNER AND
49 LOCATIONS IN WHICH SUCH EXCESS WILL BE DISPOSED AND EVIDENCE THAT
50 DISPOSAL OF THE EXCESS IN SUCH MANNER AND AT SUCH LOCATIONS WILL NOT
51 CAUSE POLLUTION OR THREATEN TO CAUSE POLLUTION TO GROUND OR SURFACE
52 WATERS; AND (V) DISPOSAL, INCLUDING MILKHOUSE WASTE, MEDICAL WASTE,
53 HUMAN SEPTIC, CHEMICALS, AND DEAD LIVESTOCK.

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

1 SUPPORT OF THE STATEMENT SUBMITTED PURSUANT TO PARAGRAPH (C) OF THIS
2 SUBDIVISION. SUCH MAP OR MAPS SHALL INCLUDE SUFFICIENT INFORMATION ON
3 THE LOCATION OF THE LAND TRACT OR TRACTS AND FACILITIES AS WILL REASON-
4 ABLY ALLOW THE DISTRICT OFFICE TO LOCATE SUCH TRACT OR TRACTS AND FACIL-
5 ITIES.

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

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

17 3. THE ACTIVITIES AND FACILITIES PROPOSED TO BE UNDERTAKEN,
18 CONSTRUCTED, OR OPERATED IN THE NUTRIENT MANAGEMENT PLAN BY THE LIVE-
19 STOCK OPERATION SHALL COMPLY WITH ALL OTHER STATE AND LOCAL LAWS, REGU-
20 LATIONS, OR ORDINANCES.

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

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

33 3. REVISED MANURE MANAGEMENT PERMIT APPLICATIONS AND NUTRIENT MANAGE-
34 MENT PLANS SHALL BE RESUBMITTED PRIOR TO THE FOLLOWING EVENTS:

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

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

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

41 S 2. This act shall take effect on the one hundred eightieth day after
42 it shall have become a law. Effective immediately, the addition, amend-
43 ment or repeal of any rule or regulation necessary for the implementa-
44 tion of this act on its effective date is authorized to be made on or
45 before such effective date.