

(Prepared July 8, 2005)

UNOFFICIAL COPY:

ACT 38 OF 2005

ACRE Provisions Relating to:
Review of Local Ordinances
and
Nutrient Management
and
Odor Management

The following is an unofficial copy of Act 38 of 2005 - the "ACRE" legislation, containing provisions relating to review of local ordinances, nutrient management and odor management. This legislation was originally House Bill No. 1646 of 2005, and was signed into law by the Governor on July 6, 2005.

The document is "unofficial" because it has been retyped. Any discrepancies between this document and the official statute shall be resolved in favor of the official statute.

Pursuant to Section 5 (on page 22 of this document), Act 38 of 2005 became effective on July 6, 2005, except for:

1. Section 507 (manure application setbacks and buffers), which *becomes effective on January 2, 2006* (180 days from July 6, 2005); and
2. Subsection 519(c) (relating to preemption of local ordinances - odor management), which takes effect when regulations are promulgated or interim guidelines are adopted - whichever occurs first.

Section numbers refer to the corresponding section in Title 3 of Pa.C.S.A.

AN ACT

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, providing for a prohibition against unauthorized local government unit actions; establishing a cause of action for unauthorized enactment or enforcement of local ordinances governing normal agricultural operations; providing for duties of the Attorney General and for hearings; consolidating the Nutrient Management Act; further providing for scope, for legislative purpose, for definitions and for administration; providing for manure application; further providing for nutrient management and odor management certification; providing for odor management plans; further providing for the Nutrient Management Advisory Board, for financial assistance, for unlawful conduct, for civil penalties and for local preemption; providing for other statutes and for regulations; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania declares that the Commonwealth has a vested and sincere interest in ensuring the long-term sustainability of agriculture and normal agricultural operations in a manner that is consistent with State policies and statutes. In furtherance of this goal, the Commonwealth has enacted statutes to

protect and preserve agricultural operations for the production of food and other agricultural products.

The Commonwealth has also empowered local government units to protect the health, safety and welfare of their citizens and to ensure that normal agricultural operations do not negatively impact upon the health, safety and welfare of citizens.

It is the purpose of this act to ensure that when local government units exercise their responsibilities to protect the health, safety and welfare of their citizens in regulating normal agricultural operations, that ordinances are enacted consistent with the authority provided to local government units by the laws of this Commonwealth.

The General Assembly of the Commonwealth of Pennsylvania further declares that the intent of this act is to provide for the resolution of conflicts that may arise from the regulation of normal agricultural operations. It is further the intent of this act that this process:

- (1) provides a dispassionate and unprejudiced legal review of local ordinances regulating normal agricultural operations to determine whether a local ordinance complies with the Commonwealth's existing statutes;
- (2) reduces the costs associated with determining whether a local ordinance complies with the Commonwealth's existing statutes by utilizing current State resources and mechanisms; and
- (3) provides for a prompt and fair resolution to the conflict.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 3 of the Pennsylvania Consolidated Statutes is amended by adding chapters to read:

CHAPTER 3 LOCAL REGULATION

Subchapter

- A. Preliminary Provisions
- B. Normal Agricultural Operations

SUBCHAPTER A PRELIMINARY PROVISIONS

Sec.

311. Scope.
312. Definitions.

§ 311. Scope.

This chapter deals with local regulation of normal agricultural operations.

§ 312. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Local government unit." A political subdivision of the Commonwealth.

"Normal agricultural operation." As defined under section 2 of the act of June 10, 1982 (P.L.454, No.133), entitled, "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances."

"Unauthorized local ordinance." An ordinance enacted or enforced by a local government unit which does any of the following:

- (1) Prohibits or limits a normal agricultural operation unless the local government unit:
 - (i) has expressed or implied authority under State law to adopt the ordinance; and
 - (ii) is not prohibited or preempted under State law from adopting the ordinance.
- (2) Restricts or limits the ownership structure of a normal agricultural operation.

SUBCHAPTER B NORMAL AGRICULTURAL OPERATIONS

Sec.

- 313. Certain local government unit actions prohibited.
- 314. Duties of Attorney General.
- 315. Right of action.
- 316. Commonwealth Court masters.
- 317. Attorney fees and costs.
- 318. Reports to General Assembly.

§ 313. Certain local government unit actions prohibited.

(a) **Adoption and enforcement of unauthorized local ordinances.**--A local government unit shall not adopt nor enforce an unauthorized local ordinance.

(b) **Existing local ordinances.**--This chapter shall apply to the enforcement of local ordinances existing on the effective date of this section and to the enactment or enforcement of local ordinances enacted on or after the effective date of this section.

(c) **Construction.**--Notwithstanding the provisions of this section, nothing in this chapter shall be construed to diminish, expand or otherwise affect the legislative or regulatory authority of local government units under State law, including the following:

- (1) Chapter 5 (relating to nutrient management and odor management).
- (2) The regulation, control or permitting procedures for the land application of class A or B biosolids.

§ 314. Duties of Attorney General.

(a) **Request for review.**--An owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under section 315(a) (relating to right of action).

(b) **Discretion.**--The Attorney General has the discretion whether to bring an action under section 315(a).

(c) **Response.**--Within 120 days after receiving a request under subsection (a), the Attorney General shall advise the person that made the request whether or not the Attorney General will bring legal action under section 315(a). If the request under subsection (a) is in writing, the response shall be in writing.

(d) **Consultation.**--The secretary and the dean of the College of Agricultural Sciences at The Pennsylvania State University shall, upon request of the Attorney General, provide expert consultation regarding the nature of normal agricultural operations in this Commonwealth.

§ 315. Right of action.

(a) **Attorney General action.**--The Attorney General may bring an action against the local government unit in Commonwealth Court to invalidate the unauthorized local ordinance or enjoin the enforcement of the unauthorized local ordinance.

(b) **Other party action.**--Notwithstanding any provision of 42 Pa.C.S. Ch. 85 Subch. C (relating to actions against local parties), any person who is aggrieved by the enactment or enforcement of an unauthorized local ordinance may bring an action against the local government unit in Commonwealth Court to invalidate the unauthorized local ordinance or enjoin the enforcement of the unauthorized local ordinance.

§ 316. Commonwealth Court masters.

(a) **General rule.**--The Commonwealth Court may promulgate rules for the selection and appointment of masters on a full-time or part-time basis for actions brought under section 315 (relating to right of action). A master shall be a member of the bar of this Commonwealth. The number and compensation of masters shall be fixed by the Commonwealth Court and their compensation shall be paid by the Commonwealth.

(b) **Hearings before masters.**--The Commonwealth Court may direct that hearings in actions brought under section 315 be conducted in the first instance by the master in the manner provided for in this subchapter.

(c) **Recommendations of masters.**--Upon the conclusion of a hearing before a master, the master shall transmit written findings and a recommendation for disposition to the president judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding.

(d) **Rehearing before president judge.**--The findings and recommendations of the master shall become the findings and order of the Commonwealth Court upon written confirmation by the president judge. A rehearing may be ordered by the president judge at any time upon cause shown.

§ 317. Attorney fees and costs.

In an action brought under section 315(b) (relating to right of action), the court may do any of the following:

(1) If the court determines that the local government unit enacted or enforced an unauthorized local ordinance with negligent disregard of the limitation of authority established under State law, it may order the local government unit to pay the plaintiff reasonable attorney fees and other litigation costs incurred by the plaintiff in connection with the action.

(2) If the court determines that the action brought by the plaintiff was frivolous or was brought without substantial justification in claiming that the local ordinance in question was unauthorized, it may order the plaintiff to pay the local government unit reasonable attorney fees and other litigation costs incurred by the local government unit in defending the action.

§ 318. Reports to General Assembly.

The Attorney General shall provide to the chairman and the minority chairman of the Senate Committee on Agricultural and Rural Affairs and the chairman and minority chairman of the Agricultural and Rural Affairs Committee of the House of Representatives an annual report to include the following:

(1) Information on how many reviews were requested, the nature of the complaints and the location of the ordinances cited.

(2) Information on how many reviews were conducted.

(3) Information on how many legal actions were brought by the Attorney General.

(4) Information on the outcome of legal actions brought by the Attorney General.

CHAPTER 5 NUTRIENT MANAGEMENT AND ODOR MANAGEMENT

Sec.

- 501. Scope.
- 502. Declaration of legislative purpose.
- 503. Definitions.
- 504. Powers and duties of commission.
- 505. Powers and duties of Department of Environmental Protection.
- 506. Nutrient management plans.
- 507. Manure application setbacks and buffers.
- 508. Nutrient management certification program and odor management certification program.
- 509. Odor management plans.
- 510. Nutrient Management Advisory Board.
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- 512. Nutrient Management Fund.
- 513. Unlawful conduct.
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- 516. Enforcement authority; enforcement orders.
- 517. Appealable actions.
- 518. Powers reserved under existing laws.
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- 522. Regulations.

§ 501. Scope.

This chapter relates to nutrient management and odor management.

§ 502. Declaration of legislative purpose.

The purposes of this chapter are as follows:

- (1) To establish criteria, nutrient management planning requirements and an implementation schedule for the application of nutrient management measures on certain agricultural operations which generate or utilize animal manure.
- (2) To provide for the development of an educational program by the State Conservation Commission in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the department and conservation districts to provide outreach to the agricultural community on the proper utilization and management of nutrients on farms to prevent the pollution of surface water and ground water.
- (3) To require the State Conservation Commission, in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the Department of Environmental Protection, the department and the Nutrient Management Advisory Board to develop and provide technical and financial assistance for nutrient management and alternative uses of animal manure, including a manure marketing and distribution program.
- (4) To require the Department of Environmental Protection to assess the extent of nonpoint source pollution from other nutrient sources, determine the adequacy of existing authority and programs to manage those sources and make recommendations to provide for the abatement of that pollution.

(5) To require the State Conservation Commission, in conjunction with the Nutrient Management Advisory Board, to develop and administer a regulatory program requiring odor management plans addressing new and expanded animal housing facilities and manure management facilities at concentrated animal operations and concentrated animal feeding operations after July 19, 1993, and to encourage the voluntary implementation of odor management plans for other agricultural operations.

§ 503. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"AEU." Animal equivalent unit.

"AEU per acre." An animal equivalent unit per acre of crop land or acre of land suitable for application of animal manure.

"Agricultural operations." The management and use of farming resources for the production of crops, livestock or poultry.

"Animal equivalent unit." One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

"Animal housing facility." A roofed structure or facility, or any portion thereof, used for occupation by livestock or poultry.

"Best management practice" or "BMP." A practice or combination of practices determined by the commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface and ground water taking into account applicable nutrient requirements for crop utilization. The term includes, but is not limited to:

- (1) Conservation tillage.
- (2) Crop rotation.
- (3) Soil testing.
- (4) Manure testing.
- (5) Diversions.
- (6) Manure storage facilities.
- (7) Storm water management practices.
- (8) Nutrient application.

"Board." The Nutrient Management Advisory Board created by section 510 (relating to Nutrient Management Advisory Board).

"Commission." The State Conservation Commission established by the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

"Concentrated animal feeding operation." An agricultural operation that meets the criteria established by the Department of Environmental Protection under authority of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

"Concentrated animal operation." Agricultural operations meeting the criteria established under this chapter.

"Conservation district." Any county conservation district established under the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

"Cooperative extension." The Cooperative Extension Service of The Pennsylvania State University.

"Department." The Department of Agriculture of the Commonwealth.

"Fund." The Nutrient Management Fund.

"Manure management facility." A manure storage facility, including a permanent structure or facility, or a portion of a structure or facility, utilized for the primary purpose of containing manure. The term includes liquid manure structures, manure storage ponds,

component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities. The term does not include the animal confinement areas of poultry houses, horse stalls, free stall barns or bedded pack animal housing systems.

"Nutrient." A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

"Nutrient management plan." A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in sections 504 (relating to powers and duties of commission) and 506 (relating to nutrient management plans).

"Nutrient management specialist." A person satisfying the certification requirements of section 508 (relating to nutrient management certification program and odor management certification program).

"Odor management plan." A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

§ 504. Powers and duties of commission.

The commission shall have the following powers and duties:

(1) Before July 19, 1995, and periodically thereafter, to promulgate regulations, in consultation with the department, the Department of Environmental Protection and the board, establishing minimum criteria for nutrient management plans developed in accordance with section 506 (relating to nutrient management plans) and other regulatory requirements to implement this chapter. In establishing such criteria, the commission shall consult the Manure Management for Environmental Protection Manual of the Department of Environmental Protection, the Pennsylvania Agronomy Guide, published by The Pennsylvania State University, and the Pennsylvania Technical Guide for Soil and Water Conservation, published by the United States Department of Agriculture's Soil Conservation Service. The criteria to be established pursuant to this section shall include the following:

(i) An identification of nutrients as defined by this chapter. Unless otherwise appropriate pursuant to specific criteria which shall be established by the commission, there shall be a presumption that nitrogen is the nutrient of primary concern.

(ii) The establishment of procedures to determine proper application rates of nutrients to be applied to land based on conditions of soil and levels of existing nutrients in the soil and the type of agricultural, horticultural or floricultural production to be conducted on the land.

(iii) An identification of best management practices to be utilized for proper nutrient management.

(iv) The establishment of recordkeeping requirements related to land application and distribution of nutrients.

(v) The establishment of minimum standards of construction, location, storage capacity and operation of facilities intended to be used for storage of animal manure.

(vi) The establishment of conditions under which amendments to nutrient management plans are required to be made after initial development or filing.

(vii) The establishment of special criteria which may be utilized for manure handling in emergency situations where there is an outbreak of a contagious disease.

(viii) The establishment of conditions under which changes due to unforeseen circumstances render the plan amendment process set forth in section 506(e) impracticable. Where such conditions exist, the owner or operator of an agricultural operation shall follow the procedures set forth in section 506(f).

(1.1) Within two years following the effective date of this section, and periodically thereafter, to promulgate regulations, in consultation with the department, the Department of Environmental Protection and the board, establishing practices, technologies, standards, strategies and other requirements for odor management plans developed in accordance with section 509 (relating to odor management plans). The commission shall consider the following in promulgating the regulations under this paragraph:

(i) Site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds.

(ii) Reasonably available technology, practices, standards and strategies to manage odor impacts, considering both the practical and economic feasibility of installation and operation and the potential impacts from the facilities. Only those technologies, practices, standards and strategies that are necessary to address the off-site impacts of odors associated with these new facilities will be required to be included in the odor management plans.

(2) Prior to the adoption of regulations under paragraph (1.1), to establish interim guidelines for the operations identified in section 509.

(3) To continually evaluate emerging practices, methods and technology for utilization as best management practices and to so identify the practices, where appropriate, pursuant to paragraph (1)(iii).

(4) Beginning October 1, 2002, to evaluate the criteria for concentrated animal operations in this Commonwealth and to make appropriate changes in those criteria by regulation. Any such regulatory change related to concentrated animal operations shall require a two-thirds majority vote of the commission.

(5) Prior to the adoption of regulations under paragraph (1), to recommend, in consultation with the Department of Environmental Protection, the department and the board, interim criteria for the sole purpose of facilitating the initial development of the nutrient management certification program established by this chapter.

(6) Before July 19, 1995, to develop and implement, in cooperation with the department, the board, the Cooperative Extension Service and conservation districts, a program to provide education and technical assistance to the agricultural community and, to the extent funds are available, to provide financial assistance to existing agricultural operations for implementation of proper methods, practices, facilities and techniques for the utilization and management of nutrients on the farm to prevent the pollution of groundwater and surface water.

(7) To consult with the board as provided in section 510 (relating to Nutrient Management Advisory Board).

(8) To issue orders and take actions as are necessary to administer and enforce this chapter.

(9) To delegate administration or enforcement authority, or both, under this chapter to county conservation districts that have an adequate program and sufficient resources to accept and implement this delegation.

§ 505. Powers and duties of Department of Environmental Protection.

The Department of Environmental Protection shall have the following powers and duties:

(1) Before July 19, 1994, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which malfunctioning on-lot sewage systems contribute to the pollution of waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(2) Before July 19, 1994, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which improper water well construction contributes to groundwater pollution due to the intrusion of nutrients from the surface and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(3) Before July 19, 1995, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which the application of chemical fertilizers and other plant nutrients for nonagricultural purposes contributes to the pollution of the waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(4) Before July 19, 1995, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which nutrients from storm water runoff contribute to the pollution of waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(5) Before July 19, 1995, to make an assessment of and report to the Environmental Quality Board and the General Assembly on the extent to which atmospheric deposition of nutrients contribute to the pollution of the waters of this Commonwealth and to identify what regulatory or legislative initiatives, if any, the Department of Environmental Protection deems necessary to abate that pollution.

(6) To include in the assessments in paragraphs (1) through (5), recommendations to the General Assembly for budgetary and legislative initiatives where program resources or statutory authority is not adequate to address pollution sources identified in those assessments.

(7) To provide technical and administrative assistance to the commission in carrying out its responsibilities under this chapter.

§ 506. Nutrient management plans.

(a) **Concentrated animal operations.**--Concentrated animal operations are those agricultural operations where the animal density exceeds two AEU's per acre on an annualized basis. Beginning October 1, 2002, the commission, in consultation with the department, the board, the Department of Environmental Protection and the Cooperative Extension Service shall review the criteria used to identify concentrated animal operations and make appropriate changes to the definition of concentrated animal operations by regulation.

(b) **Development of nutrient management plans.**--The operator of any concentrated animal operation shall develop and implement a nutrient management plan consistent with the requirements of this section.

(c) **Certification of plans.**--All plans and plan amendments shall be developed by nutrient management specialists who shall certify that the plans are in accordance with the requirements of this chapter and the regulations promulgated under this chapter.

(d) **Review procedure.**--Nutrient management plans required by this section shall be submitted for review in accordance with the following schedule:

(1) For a concentrated animal operation in existence on October 1, 1997, by October 1, 1998.

(2) For a concentrated animal operation which comes into existence after October 1, 1997, by the later of:

- (i) January 1, 1998; or
- (ii) commencement of operations.

(3) For an agricultural operation which, because of expansion, meets the criteria for a concentrated animal operation, within three months after the date of expansion.

(e) **Plan review and approval.**--Plans or plan amendments required under this chapter shall be submitted to local conservation districts for review and approval or alternatively to the commission for agricultural operations located in counties not delegated administrative authority under section 504 (relating to powers and duties of commission). Any person performing the plan review must be certified in accordance with section 508 (relating to nutrient management certification program and odor management certification program). Within 90 days of receipt of a nutrient management plan or plan amendment, the reviewing agency shall either approve, modify or disapprove the plan or plan amendment. Approvals shall only be granted for those plans or plan amendments which satisfy the requirements of this chapter and the regulations promulgated under this chapter. Notice of determination to approve, modify or disapprove a plan or plan amendment shall be provided in writing to the person submitting same. Notice of a determination to modify or disapprove shall include an explanation specifically stating the reasons for modification or disapproval. If a plan or plan amendment is disapproved, the person submitting a plan or plan amendment for the first time shall have 90 days after receipt of notice of disapproval to resubmit a revised plan or plan amendment. An agricultural operation that submits a complete plan or plan amendment is authorized to implement the same if the reviewing agency fails to act within 90 days of submittal. Where the reviewing agency fails to so act and the plan or plan amendment is resubmitted and the reviewing agency again fails to act within 90 days of resubmittal, it shall be deemed approved.

(f) **Amendments due to unforeseen circumstances.**--Amendments to plans or to implementation of plans made after initial development or filing which satisfy the criteria established under section 504(1)(vii) shall be certified by a nutrient management specialist prior to implementation and submitted to the district within 30 days of implementation.

(g) **Implementation.**--A person required to develop a nutrient management plan pursuant to subsection (b) shall fully implement such plan within three years of the date such plan is approved, or is deemed approved, or for which implementation is otherwise authorized pursuant to subsection (e), unless extended for cause shown or by a plan amendment. The three-year implementation schedule shall be extended an additional two years for individual substantial capital improvements required under an approved plan for an operation required to submit a plan under subsection (d)(1) if:

(1) the owner or operator demonstrates that the cost of all or part of the individual improvements for which the extension is applicable cannot be financed through available funding mechanisms; and

(2) a sum of \$2,000,000 or more has not been appropriated for grants and loans to the Nutrient Management Fund created under section 512 (relating to Nutrient Management Fund), above and beyond any Chesapeake Bay nonpoint source pollution abatement moneys that may be appropriated to the fund, before October 1, 1998.

(h) **Voluntary plans.**--Any agricultural operation which is not a concentrated animal operation may voluntarily develop a nutrient management plan and have it reviewed pursuant to this section. To the extent possible, the commission, the Cooperative Extension Service, the department, the Department of Environmental Protection and conservation districts shall assist and promote the development of voluntary plans.

(i) **Financial assistance.**--Any agricultural operation receiving financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program or otherwise receiving financial assistance under this chapter for the development of a nutrient management plan shall agree to develop and implement a nutrient management plan as a condition for receiving this financial assistance.

(j) **Compliance plans.**--Any agricultural operation found to be in violation of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, may be required to submit a nutrient management plan within three months of notification thereof and implement the plan in order to prevent or abate such pollution.

(k) **Transferability of plans.**--A plan approved under this section shall be transferable to a subsequent owner of an agricultural operation upon notification thereof to the district, unless the transfer results in operational changes requiring plan modification pursuant to the criteria established under section 504(1)(vi).

(l) **Construction of section.**--The density criteria for concentrated animal operations as identified in subsection (a) or as it may be subsequently modified by the commission shall only be utilized to identify those agricultural operations for which the planning requirements of this section shall apply and shall not be construed to prohibit the development or expansion of agricultural operations meeting or exceeding such criteria.

§ 507. Manure application setbacks and buffers.

(a) **General rule.**--Unless the commission establishes a stricter requirement by regulation, no concentrated animal operation, or other agricultural operation receiving manure from a concentrated animal operation directly or indirectly through a broker or other person, may mechanically land apply manure within 100 feet of surface water, unless a vegetated buffer no less than 35 feet in width and meeting standards established by the Natural Resources Conservation Service is used to prevent manure runoff into the surface water.

(b) **Definition.**--As used in this section, the term "surface water" means a perennial or intermittent stream with a defined bed and bank, a lake or a pond.

§ 508. Nutrient management certification program and odor management certification program.

(a) **Requirement.**--The department shall establish, in consultation with the commission, a nutrient management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop nutrient management plans and an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The department or its designee shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The department shall by regulation establish such fees and terms and conditions of certification as it deems appropriate. The department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans and odor management plans for their own agricultural operations.

(b) **Interim nutrient management certification program.**--Until the department develops and implements a nutrient management certification program, persons having the following qualifications shall, upon request, receive interim certification from the department.

(1) the person has at least two years' experience in the development of nutrient management plans;

(2) the person is approved to develop nutrient management plans approved under the Chesapeake Bay Nonpoint Source Pollution Abatement Program, the United States

Department of Agriculture's Water Quality Improvement Projects Program or other programs requiring submission and approval of a nutrient management plan, including sludge disposal under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act; or

(3) the person is a farmer who has been provided training and assistance in developing and implementing nutrient management plans.

(c) **Nutrient management specialist.**--A person shall not certify a nutrient management plan or plan amendment unless that person has first satisfied the requirements of this section.

(d) **Odor management specialist.**--A person shall not certify an odor management plan or plan amendment unless that person has first satisfied the applicable requirements of this section.

§ 509. Odor management plans.

(a) **Requirement.**--

(1) The following operations shall develop and implement an odor management plan as described in this chapter:

(i) Existing concentrated animal operations and existing concentrated animal feeding operations, when doing any of the following:

(A) Erecting or constructing a new animal housing facility or a new manure management facility. The odor management plan required by this paragraph shall be developed and implemented only with respect to the new facility.

(B) Erecting or constructing an expansion of an animal housing facility or a manure management facility. The odor management plan required by this paragraph shall be developed and implemented only with respect to the newly erected or newly constructed portion of the facility.

(ii) Existing agricultural operations which, because of an increase, resulting from expansion or construction, in the number of animals maintained at the operation, will become regulated as either a concentrated animal operation or a concentrated animal feeding operation. The odor management plan required by this paragraph shall be developed and implemented only with respect to the newly expanded or newly constructed portion of the operation.

(iii) New agricultural operations which will be regulated as either a concentrated animal operation or a concentrated animal feeding operation.

(2) The operations described in paragraph (1)(i) and (ii) shall obtain approval of their odor management plan prior to the earlier of erection or construction of new or expanded animal housing facilities or the construction of new or expanded manure management facilities.

(b) **Certification of plans.**-- All odor management plans and plan amendments shall be developed by odor management specialists who shall certify that the plans are in accordance with the requirements of the odor management regulations promulgated under this chapter.

(c) **Reviewing entities.**--Odor management plans or plan amendments required by this section shall be submitted to the commission for review and approval or, at the commission's discretion, to the appropriate local conservation district for review and approval.

(d) **Plan review and approval.**--Any person performing the plan review must be certified in accordance with section 508 (relating to nutrient management certification program and odor management certification program). Within 90 days of receipt of an odor management plan or plan amendment, the reviewing agency shall approve or disapprove the plan or plan

amendment. Approvals shall only be granted for those plans or plan amendments which satisfy the requirements of the regulations promulgated under this chapter. Notice of determination to approve or disapprove a plan or plan amendment shall be provided in writing to the person submitting same. Notice of a determination to disapprove shall include an explanation specifically stating the reasons for disapproval. If a plan or plan amendment is disapproved, the person submitting a plan or plan amendment for the first time shall have 90 days after receipt of notice of disapproval to resubmit a revised plan or plan amendment. An existing or proposed concentrated animal operation or concentrated animal feeding operation that submits a complete plan or plan amendment is authorized to implement the same if the reviewing agency fails to act within 90 days of submittal.

(e) **Implementation.**--A person required to have an odor management plan under this section shall fully implement the plan prior to commencing use of the new animal housing facility or animal manure facility.

(f) **Voluntary plans.**-- Any agricultural operation which is not required to comply with subsection (a) may voluntarily develop an odor management plan and have it reviewed pursuant to this section. To the extent possible, the commission, the Cooperative Extension Service, the department, the Department of Environmental Protection and conservation districts shall assist and promote the development of voluntary plans.

(g) **Transferability of plans.**--A plan approved under this section shall be transferable to a subsequent owner of an agricultural operation upon notification thereof to the district, unless the transfer results in operational changes requiring plan modification pursuant to the criteria established in this section.

(h) **Effectiveness of the section.**--The requirements of this section shall become mandatory 90 days following the effective date of the regulations promulgated under section 504(1.1) (relating to powers and duties of commission).

§ 510. Nutrient Management Advisory Board.

(a) **Creation.**--There is created the Nutrient Management Advisory Board. The board shall consist of 16 members appointed by the chairman of the commission and approved by a two-thirds vote of the commission. The members so appointed shall consist of five active commercial farm owners or operators representing the livestock, swine, meat poultry, egg poultry and dairy industry nominated by Statewide general farm organizations, one veterinary nutrition specialist, one representative from the feed industry, one representative from the fertilizer industry, one representative of commercial agricultural lenders, one representative of local government, one representative of academia who shall be an agronomist or plant scientist faculty member of the school of agriculture of a Pennsylvania college or university, one representative of academia who shall be an animal science faculty member with an expertise in odor management from the school of agriculture of a college or university within this Commonwealth, one hydrologist, two citizen representatives who are not farmers and one environmental representative, all of whom shall have sufficient knowledge, experience or familiarity with agronomic practices, nutrient management practices or odor management practices and all of whom shall be residents of this Commonwealth.

(b) **Compensation.**--Board members shall not receive a salary but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties.

(c) **Meetings.**--A majority of the board shall constitute a quorum. All actions of the board shall be by a majority vote. The board shall meet upon the call of the commission, but not less than semiannually, to carry out its duties under this chapter. The board shall annually select a chairman and such other officers as it deems appropriate.

(d) **Duties.**--The board shall review and comment on all commission proposed regulations, the interim guidelines under section 504(2) (relating to powers and duties of commission) and

the interim criteria under section 504(5) developed to implement the provisions of this chapter. The commission shall have no power to promulgate regulations, interim guidelines or interim criteria under this chapter until receipt of written comments on the proposed regulations, guidelines or criteria from the board or until 60 days have expired from the date when the regulations, guidelines or criteria were submitted by the commission to the board for its comments. Existing regulations, guidelines and criteria shall continue until modified, superseded or repealed by the commission.

(e) **Term.**--The term of office for each board member shall be three years except that the commission shall stagger the initial terms of the charter members such that five shall serve for one year, five shall serve for two years and six shall serve for three years. Board members may be appointed to successive terms at the discretion of the commission, provided that no member may serve more than two three-year terms.

§ 511. Financial assistance.

(a) **Loans, grants, etc.**--The commission shall, to the extent funds are available, provide financial assistance in the form of loans, loan guarantees and grants for the implementation of nutrient management plans and of odor management plans for existing agricultural operations.

(b) **Criteria for eligibility.**--In reviewing applications for financial assistance, the commission shall consider the following:

(1) Whether the project will improve the health, safety or environment of the people of this Commonwealth and otherwise satisfy the purposes of this chapter.

(2) The cost-effectiveness of the proposed practices in comparison with other alternatives.

(3) The applicant's ability to operate or maintain the practices in a proper manner.

(c) **Issuance and terms.**--Subject to this section, the commission shall issue loans and set terms applicable thereto in any manner it deems appropriate. The commission may consider such factors as it deems relevant, including current market interest rates, the financial ability of the applicant to repay and the necessity to maintain the funds created hereunder in a financially sound manner. Loans may be based on the ability to repay from future revenue to be derived from the applicant's agricultural operation, by a mortgage or other security interest, or by any other fiscal manner which the commission deems appropriate. The board shall have the power to defer principal on loans for up to 12 months. The minimum rate of interest to be paid on any loan made pursuant to this section shall be 1%.

(d) **Grants.**--Grants shall be made available as follows:

(1) Where funds have been made available to the commission, subject to any conditions that may have accompanied the receipt of such funds.

(2) Where the commission, in its sole discretion, determines that the financial condition of the recipient is such that repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of practices without a grant.

(e) **Grants and loans.**--The commission shall, where it deems it appropriate and to the extent financial circumstances permit, mix grant funds with loan funds.

§ 512. Nutrient Management Fund.

(a) **Establishment of fund.**--There is established a special nonlapsing fund in the State Treasury to be known as the Nutrient Management Fund. All fees, fines, judgments and interest collected by the commission under this chapter shall be paid into the fund. All money placed in the fund and the interest it accrues are hereby appropriated to the commission on a continuing basis for any activities necessary to meet the requirements of this chapter.

(b) **Supplements to fund.**--The Nutrient Management Fund may be supplemented by moneys received from the following sources:

- (1) State funds appropriated to the commission.
- (2) Federal funds appropriated to the commission.
- (3) Proceeds from the sale of any bonds made available to the commission.
- (4) Repayment of loan principal.
- (5) Payment on interest loans made by the commission.
- (6) Gifts and other contributions from public and private sources.

(c) **Fund administration.**--The commission shall have authority to adopt procedures for the use of moneys in the fund, including the creation of accounts within the fund for the purposes of administering the loan and grant programs authorized by this chapter.

(d) **Status of fund.**--The Nutrient Management Fund shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system).

(e) **Deposit and use of funds.**--No administrative action shall prevent the deposit of moneys into the fund in the fiscal year in which they are received. The funds shall only be used for the purposes authorized by this chapter and shall not be transferred or diverted to any other purpose by administrative action.

§ 513. Unlawful conduct.

It shall be unlawful to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this chapter or the rules and regulations adopted under this chapter or to fail to comply with a nutrient management plan or an odor management plan.

§ 514. Civil penalties and remedies.

(a) **Civil penalty.**--In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted, order issued or odor management plan or nutrient management plan approved under this chapter, the commission may assess a civil penalty of not more than \$500 for the first day of each offense and \$100 for each additional day of continuing violation. The factors for consideration in determining the amount of the penalty are:

- (1) The gravity of the violation.
- (2) The potential harm to the public.
- (3) The potential effect on the environment.
- (4) The willfulness of the violation.
- (5) Previous violations.
- (6) The economic benefit to the violator for failing to comply with this chapter.

Whenever the commission finds that a violation did not cause harm to human health or an adverse effect on the environment, the commission may issue a warning in lieu of assessing a penalty where the owner or operator, upon notice, takes immediate action to resolve the violation and come into compliance. If the commission finds the nutrient pollution or the danger of nutrient pollution or the negative impacts from odor associated with new or expanded facilities results from conditions, activities or practices which are being or have been implemented in accordance with a nutrient management plan or odor management plan developed and approved pursuant to and consistent with this chapter and the regulations developed under this chapter and which is being or has been fully implemented and maintained, the owner or operator of the agricultural operation shall be exempt from the imposition of penalties under this chapter.

(b) **Collection.**--In cases of inability to collect the civil penalty or failure of any person to pay all or a portion of the penalty, the commission may refer the matter to the Office of General Counsel or the Office of Attorney General which shall institute an action in the

appropriate court to recover the penalty. Any penalty assessed shall act as a lien on the property of the person against whom the penalty has been assessed.

(c) **Civil remedies.**--In addition to any other remedies provided for in this chapter, any violation of this chapter, the rules and regulations promulgated under this chapter or any order or nutrient management plan or odor management plan approved under this chapter shall be abatable in the manner provided by law or equity for the abatement of public nuisances. In addition, in order to restrain or prevent any violation of this chapter or the rules and regulations promulgated under this chapter or any order or nutrient management plan or odor management plan approved under this chapter, suits may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, the General Counsel, the district attorney of any county, the solicitor of any municipality affected or the solicitor of any conservation district, provided that the General Counsel, district attorney or solicitor shall first serve notice upon the Attorney General of the intention to so proceed. These proceedings may be prosecuted in the Commonwealth Court or in the court of common pleas of the county where the activity has taken place, the condition exists or the public is affected, and, to that end, jurisdiction is hereby conferred in law and equity upon these courts. Except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate abatement of the nuisance, the court may, in its decree, fix a reasonable time during which the person responsible for the nuisance may make provision for the abatement of same.

(d) **Equitable relief.**--In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction, special injunction or temporary restraining order may be issued upon the terms prescribed by the court, provided that notice of the application has been given to the defendant in accordance with the rules of equity practice. In any such proceeding the Attorney General, the General Counsel, the district attorney or the solicitor of any municipality or conservation district shall not be required to give bond. In any such proceeding, the court shall issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this chapter or is engaged in conduct which is causing immediate and irreparable harm to the public. In addition to an injunction, the court in such equity proceeding may assess civil penalties in accordance with this section.

§ 515. Limitation of liability.

If a person is fully and properly implementing a nutrient management plan or an odor management plan approved by the local conservation district or the commission and maintained under this chapter for an agricultural operation, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients or the abatement of odor impacts pursuant to the implementation.

§ 516. Enforcement authority; enforcement orders.

(a) **Right of access.**--A duly authorized agent of the commission or a conservation district shall have authority to enter any agricultural operation at reasonable times to conduct such investigations and to take such actions as are necessary to enforce the provisions of this chapter or any order, rule or regulation issued hereunder.

(b) **Duty to grant access.**--Any person owning or operating an agricultural operation shall grant access to any duly authorized agent of the commission or a conservation district pursuant to subsection (a) and shall not hinder, obstruct, prevent or interfere with such agents in the performance of their duties, provided, however, that agents shall perform such reasonable measures and actions as directed by the owner or operator of an agricultural

operation as will reasonably and substantially prevent the spread or outbreak of contagious diseases.

(c) **Orders.**--The commission or any conservation district delegated enforcement authority may issue such orders as are necessary to aid in the enforcement of the provisions of this chapter. Any order issued under this section shall take effect upon notice unless the order specifies otherwise. An appeal of the order to the Environmental Hearing Board shall not act as a supersedeas, provided that upon application for and cause shown, the Hearing Board may issue such a supersedeas under the rules established by the Hearing Board.

§ 517. Appealable actions.

Any person aggrieved by an order or other administrative action of the commission issued pursuant to this chapter shall have the right, within 30 days from actual or constructive notice of the action, to appeal the action to the Environmental Hearing Board.

§ 518. Powers reserved under existing laws.

Nothing in this chapter shall limit in any way whatever the powers conferred upon the commission, the department, the Department of Environmental Protection, or a conservation district under laws other than this chapter, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, and the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and common law. All such powers are preserved and may be freely exercised. A court exercising general equitable jurisdiction shall not be deprived of such jurisdiction even though a nuisance or condition detrimental to health is subject to regulation or other action by the board under this chapter.

§ 519. Preemption of local ordinances.

(a) **General.**--This chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding nutrient management and odor management, to the exclusion of all local regulations.

(b) **Nutrient management.**--No ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(c) **Odor management.**--No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(d) **Stricter requirements.**--Nothing in this chapter shall prevent a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this chapter and the regulations or guidelines promulgated under this chapter. No penalty shall be assessed under any such local ordinance or regulation under this subsection for any violation for which a penalty has been assessed under this chapter.

§ 520. Repeals.

All acts and parts of acts are repealed insofar as they are inconsistent with this chapter.

§ 521. Other statutes not affected.

This chapter shall not be construed as modifying, rescinding or superseding any other statute, or as regulating biosolids, and shall be read in *pari materia* with other statutes. Nothing in this chapter shall limit in any way whatever the powers conferred upon the department, the Department of Environmental Protection and the State Conservation Commission under statutes other than this chapter. All such powers are preserved and may be freely exercised.

§ 522. Regulations.

The Department of Environmental Protection is authorized to adopt such regulations as it deems necessary to its administration and enforcement of this chapter. This includes the authority to establish, by regulation, such fees as are reasonably necessary to fund the implementation and enforcement of this chapter.

Section 2.

(a) Except as set forth in subsection (b), the provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

(b) If any provision of the addition of 3 Pa.C.S. Ch. 3 or the application of such a provision to any person or circumstance is held invalid, the following provisions are void:

- (1) The addition of 3 Pa.C.S. Ch. 5.
- (2) Section 3 of this act.

Section 3. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph 2 is necessary to effectuate the nutrient management provisions being consolidated under this act.

(2) The act of May 20, 1993 (P.L. 12, No. 6), known as the Nutrient Management Act, is repealed.

Section 4. The addition of 3 Pa.C.S. Ch. 5 is a continuation of the act of May 20, 1993 (P.L. 12, No. 6), known as the Nutrient Management Act. The following apply:

(1) Except as otherwise provided in 3 Pa.C.S. Ch. 5, all activities initiated under the Nutrient Management Act shall continue and remain in full force and effect and may be completed under 3 Pa.C.S. Ch. 5. Orders, regulations, rules and decisions which were made under the Nutrient Management Act and which are in effect on the effective date of section 3 of this act shall remain in full force and effect until revoked, vacated or modified under 3 Pa.C.S. Ch. 5. Contracts and obligations entered into under the Nutrient Management Act are not affected nor impaired by the repeal of the Nutrient Management Act.

(2) Except as set forth in paragraph (3), any difference in language between 3 Pa.C.S. Ch. 5 and the Nutrient Management Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Nutrient Management Act.

(3) Paragraph (2) does not apply to the addition of any of the following provisions of 3 Pa.C.S.:

- (i) Section 501.
- (ii) Section 502(5).
- (iii) The definitions of "animal housing facility," "concentrated animal feeding operation," "manure management facility" and "odor management plan" in section 503.

- (iv) Section 504(1.1) and (2).
- (v) Section 506.
- (vi) Section 507.
- (vii) Section 508.
- (viii) Section 509.
- (ix) Section 510(a), (d) and (e).
- (x) Section 511(a).
- (xi) Section 513.
- (xii) Section 514(a), (c) and (d).
- (xiii) Section 515.
- (xiv) Section 519.
- (xv) Section 521.
- (xvi) Section 522.

(4) The addition of 3 Pa.C.S. Ch. 5 does not affect the terms of office of the members of the Nutrient Management Advisory Board in office on the effective date of this paragraph.

Section 5. This act shall take effect as follows:

- (1) The addition of 3 Pa.C.S. § 507 shall take effect in 180 days.
- (2) The addition of 3 Pa.C.S. § 519(c) shall take effect on the earlier of:
 - (i) the effective date of regulations promulgated under 3 Pa.C.S. § 504(1.1); or
 - (ii) the publication in the Pennsylvania Bulletin of interim guidelines under 3 Pa.C.S. § 504(2).
- (3) The remainder of this act shall take effect immediately.

END