

# Maryland Farm Bureau's Government Relations Bulletin



# 10 – October 27, 2011

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## Nutrient Management Regulations

The Maryland Department of Agriculture formally proposed the changes to the nutrient management regulations that have been the subject of debate over the last year. Some of the changes include mandatory stream fencing, limited fall nutrient application, a winter application ban for organic matter (including sewage sludge) and requirements for incorporation of most organic matter in the future. The proposed regulations were sent to the AELR Committee of the Maryland General Assembly today. If the AELR Committee finds the proposed regulations are consistent with state law, a 45-day public comment period will begin. AELR may also choose to hold a public hearing on the proposal.

Maryland Farm Bureau has commented on various versions of the proposed regulation during the last year. We specifically opposed the requirement for stream fencing and the limit on fall fertilizer application. We also objected to the original language to require incorporation of all organic matter in all circumstances. That provision has been revised. Attached is a copy of Maryland Farm Bureau's comments as filed with MDA on June 28<sup>th</sup>. Also attached is GRB # 6 from July 27<sup>th</sup> outlining changes MDA made based on comments filed by Farm Bureau and others. Once the new proposal is published in full, we will review it and file official comments with AELR and MDA. Farm Bureau members are encouraged to comment directly with AELR committee members, with MDA and with Farm Bureau.

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Here is the Press Released issued by MDA today:

FOR IMMEDIATE RELEASE

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STATE AGRICULTURE DEPARTMENT SUBMITS PROPOSED CHANGES TO NUTRIENT MANAGEMENT REGULATORY PROCESS Proposed Changes Submitted to AELR for Review Today

ANNAPOLIS, MD (October 27, 2011) – Proposed changes to the State's Nutrient Management Regulations were submitted to the Joint Committee on Administrative, Executive and Legislative Review (AELR) for review today, announced Agriculture Secretary Buddy Hance. The purpose of the changes is to achieve consistency in how all

sources of nutrients are managed. Once the proposed changes are published in the Maryland Register, the Maryland Department of Agriculture (MDA) will provide public notice and offer a 45-day public comment period.

“As science evolves and we learn more about how to better manage farms, it’s appropriate to change policies. Maryland, like all of the Bay states, is dealing with increasingly stringent environmental regulations. Total Maximum Daily Loads (TMDL) and the Watershed Implementation Plan (WIP) address all sectors dealing with both point source and non-point source controls which include agriculture,” said Secretary Hance. “This is causing us to look inward to craft changes to existing regulations. We are mindful that these changes may require new technology, and we continue to offer farmers existing cost-share programs to help us meet the goal of a healthier Chesapeake Bay.”

MDA used the best available science from the University of Maryland as a guide to develop the proposed changes to MDA’s Maryland Nutrient Management Manual, which include:

- changing rates of application, timing of application, and method of application of crop nutrients;
- defining additional management practices that may be required related to crop production, and the storage and handling of organic sources of nutrients;
- prohibiting the application of organic sources of nutrients in winter months;
- requiring certain setback requirements for the application of crop nutrients, including fencing requirements for livestock;
- establishing guidance for the use of soil amendments and soil conditioners on agricultural land, and other measures modifying the implementation of MDA’s Nutrient Management Program.

“We believe these proposed changes provide farmers and landowners with adequate time to prepare and to apply for cost-share funding to install additional best management practices,” said Secretary Hance. “The O’Malley Administration has maintained a strong commitment to provide farmers with the critical financial resources necessary to meet our shared environmental goals.”

The Nutrient Management Advisory Committee has been reviewing the scientifically based, proposed regulatory changes to the current nutrient management regulations for the past year. Additionally, MDA received a significant number of useful comments from various stakeholders during the process.

If the AELR Committee approves the proposed regulatory changes, they will be published in the Maryland Register for a 45-day public comment period. After the comment period closes, MDA will review any comments. If MDA makes substantive changes as a result of the public comment, the revised regulations will be resubmitted to the AELR and the Maryland Register.

Established in 1998 to develop and refine regulations and requirements for Maryland’s Nutrient Management Program, the 16-member Nutrient Management Advisory Committee includes representatives from the U.S. Department of Agriculture, MDA, University of Maryland, Maryland departments of the Environment and Natural Resources, Maryland Farm Bureau, Delaware-Maryland Agribusiness Association, Chesapeake Bay Foundation, Alliance for the Chesapeake Bay, commercial lawn care companies, the biosolids industry, as well as local governments and the state legislature.

A summary of the MDA’s proposed changes submitted to AELR is available online at:

[http://www.mda.state.md.us/pdf/NM\\_Regs\\_Fact\\_Sheet.pdf](http://www.mda.state.md.us/pdf/NM_Regs_Fact_Sheet.pdf)

Here is the MDA Fact Sheet summarizing the proposal:

**A Summary of the Maryland Department of Agriculture's (MDA)  
Proposed Changes to the Nutrient Management Regulations Submitted to the  
Joint Committee on Administrative, Executive and Legislative Review (AELR)**

October 27, 2011

**Introduction:** MDA is proposing changes to the State's Nutrient Management Regulations to ensure consistency with scientific findings from research conducted by the University of Maryland in partnership with various agencies and organizations, including MDA. The summary below is a general explanation of the changes and what they mean.

An additional objective of these proposed changes is to achieve consistency in how **all** nutrient sources are managed and applied to agricultural land throughout the state. This will provide consistency in the application of fertilizers, animal waste, biosolids and all other nutrient sources. That consistency is important if the State of Maryland is to meet its Total Daily Maximum Load requirements, as set forth in EPA's Watershed Implementation Plan for restoring the Chesapeake Bay. MDA is also proposing that these changes be phased in so that those impacted by them have adequate time to plan and prepare for their implementation, apply for cost-share funding, and install necessary best management practices.

**There are six major changes being proposed:**

1. **All primary nutrients must be included in Nutrient Management Plans.** This change is more of a clarification than a change. New language being proposed will specifically require all nutrient management plans to account for all sources of nutrients applied, including commercial fertilizers, organic nutrients, organic wastes, soil conditioners, soil amendments, food processing waste, etc. Although not previously spelled out in the regulations, it has always been MDA's intent that these materials be included in Nutrient Management Plans.
2. **Nitrogen may not be applied to small grains (wheat and barley) during the fall, in most circumstances.** The use of starter fertilizer (i.e., fertilizer used when a crop is newly planted) on small grains will be prohibited unless a soil test for nitrates indicates that there are too few nitrates to support the crop. (Those amounts are 10 parts per million of residual nitrate for wheat and 15 parts per million for barley.) Research conducted by the University of Maryland over four years indicated that fall application of starter nitrogen on small grains neither increased yields nor provided economic returns in the majority of cases tested. Soil nitrate tests will indicate whether there are inadequate nitrates available.
3. **The amount of nitrogen from organic sources (including animal manure and biosolids) that a farmer can apply on soybeans is restricted.** Although the University of Maryland findings indicate no nitrogen is required for soybean production, MDA is proposing to allow incidental application of nitrogen from organic nutrient sources if these sources are used to supply necessary crop phosphorus. This will allow farmers to apply nitrogen from both commercial fertilizers and organic sources, up to 50 pounds per acre, providing the phosphorous rate limits on that land are not exceeded. This allowance provides more on-farm management options for farmers who have manure resources.

**4. Requirements for the application of organic nutrient sources will change.** All organic sources of nutrients (such as manure, biosolids, food processing wastes, etc.) must be injected or, if surface applied, must be incorporated into the soil as soon as possible but no later than 72 hours. Exceptions to this regulation will be provided for manure deposited by animals, pasture and hayland, fields with highly erodible soils or disturbance restrictions imposed by federal programs, or where nutrients are applied through a spray irrigation system. There also will be new restrictions for fall and winter application. Fall application would be restricted to farms generating manure or facilities generating biosolids or waste products that have inadequate storage to carry them through March 1. Additionally this allowance for fall application would only apply to those poultry operations that have stockpiling restrictions imposed by their Concentrated Animal Feeding Operation (CAFO) permit.

**5. Requirements for winter storage of organic nutrients will change.** This change will not only affect farmers who spread or store animal manure, but also any entity that owns or manages a wastewater or food processing facility. Currently, non-stackable materials (which are defined as organic materials with a 60 percent water content – typically dairy manure) may be spread on fields if there is no place to store it. Additionally biosolids and other materials, such as food processing waste, are applied to agricultural lands throughout the winter. This change would prohibit application of fertilizer in winter and require these materials to be stored or used for alternative sources (such as energy generation) in the winter. This regulation, would take effect July 1, 2016, in order to give farmers, municipalities, counties and others time to address the new requirements. (Note: This prohibition on fertilizer application would not apply to manure deposited by livestock.)

**6. Setback requirements will change.** Currently, the Maryland Department of the Environment (MDE) requires biosolids and animal operations permitted under MDE's Confined Animal Feeding Operation program to use setbacks for nutrient application adjacent to surface water. MDA's proposed changes will create consistency among all nutrient sources by establishing a 35-foot setback for broadcast fertilizing (i.e., a method using spinners or splashers); a 10-foot setback for direct spray or injection; and a 10-foot nutrient application setback on pastures and hayfields. Fencing will be required to keep livestock out of the pasture setback areas. For purposes of MDA's requirements, surface water excludes ephemeral streams, irrigation and treatment ditches, and field ditches. These requirements would take effect Jan. 1, 2014.

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## **Joint Committee on Administrative, Executive, and Legislative Review (AELR)**

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To email a member of the Committee, use this link and call up the member's name in the list:

<http://mlis.state.md.us/mgaweb/mail32.aspx>