

CHAPTER 37  
FORMERLY  
SENATE BILL NO. 26  
AS AMENDED BY  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO NUTRIENT MANAGEMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2202, Title 3 of the Delaware Code by redesignating paragraphs (5) through (16) as paragraphs (6) through (17) and adding a new paragraph (5) to read as follows:

“(5) ‘CAFO NPDES Program’ means a regulatory program to issue a National Pollution Discharge Elimination System (NPDES) permit to a Concentrated Animal Feeding Operation (CAFO) in this State, and to undertake related activities. The CAFO NPDES Program is established pursuant to, among other authorities, the Clean Water Act and Memorandum of Understanding between the Delaware Department of Natural Resources and Environmental Control (DNREC) and the Environmental Protection Agency (EPA) dated May 4, 1983, as amended.”

Section 2. Amend § 2247(c), Title 3 of the Delaware Code by adding the following sentence at the end of said subsection: "Notwithstanding the foregoing, animal waste management plans, nutrient management plans and records of implementation may be retained, disclosed and made public as provided for in § 2248 of this Title."

Section 3. Amend § 2248(a), Title 3 of the Delaware Code by striking the phrase “at 40 C.F.R. § 122.23 and 40 C.F.R. Part 122, Appendix B, and”; and by striking the sentence at the end of said subsection and substituting in lieu thereof the following: “The Regulations Governing the Control of Water Pollution, Section 9.5 Concentrated Animal Feeding Operation, 7 Del. Admin. C. Section 7201-9.5, Del. Reg. 482 (November 2010), as may be amended, are hereby ratified and approved. Said regulations, together with the State Technical Standards, are fundamental components of the CAFO NPDES Program. Nothing in this section shall be construed to require ratification or approval of any additions, deletions, revisions or amendments of any regulations enacted pursuant to this section at any time.”

Section 4. Amend § 2248(b), Title 3 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following new subsection (b):

"(b) The Secretaries of the Delaware Department of Agriculture (DDA) and the Department of Natural Resources and Environmental Control (DNREC) shall have authority to jointly promulgate and amend regulations for the CAFO NPDES Program, including but not limited to the authority to determine the extent to which any nutrient management plan (NMP), annual report, or other documents required to be submitted by a concentrated animal feeding operation permitted under the CAFO NPDES Program, shall be made public or not, and the authority to require any concentrated animal feeding operation to apply for and obtain an NPDES CAFO permit.”

Section 5. Amend § 2248(c), Title 3 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following new subsection (c):

"(c) Each person or concentrated animal feeding operation covered by this section or identified as requiring an NMP by DDA and DNREC shall develop and submit the requisite, signed NMP, on such terms and conditions as may be specified by DDA or DNREC. The NMP shall be developed in accordance with the provisions of § 2247 of this Title, provided, however, that DNREC and DDA may prescribe additional or different requirements for an NMP submitted under the CAFO NPDES Program. As necessary, the NMP shall also include but not be limited to, the following additional site specific handling and storage considerations:

- (1) Diverting clean water from contacting animal waste or litter;
- (2) Preventing storage, collection and conveyance systems from leaking organic matter, nutrients and pathogens to ground or surface water;
- (3) Providing adequate storage to prevent polluted runoff;
- (4) Handling manure and litter to reduce nutrient losses;

- (5) Managing dead animals to protect ground and surface waters;
- (6) Proper chemical handling; and,
- (7) Tillage and crop residue management practices.

The NMP shall be amended pursuant to § 2247(d) of this title or whenever there is any significant change in the design, construction or operation which has a significant effect on the potential for the discharge of pollutants to State waters, or as may be otherwise required by regulation.”

Section 6. Amend § 2248(d), Title 3 of the Delaware Code by striking said subsection in its entirety and substituting in lieu thereof the following new subsection (d):

“(d) The Memorandum of Agreement between DDA and DNREC dated December 16, 2010 (MOA), is hereby ratified and approved. DDA has authority to fulfill the terms of the MOA, to undertake all actions ancillary to the MOA, and otherwise to contribute to the CAFO NPDES Program.”

Section 7. Amend §2248(e), Title 3, Delaware Code, by striking the sentence beginning with “With the guidance”, and ending with the phrase “pollutant to waters of the State.” in its entirety.

Section 8. Amend § 2290(b)(2), Title 3 of the Delaware Code by adding the following sentence at the end of said subsection: “Notwithstanding the foregoing, reports submitted by permitted concentrated animal feeding operations under this subsection or under the CAFO NPDES Program may be retained, disclosed and made public as provided for in § 2248 of this Title.”

Approved June 03, 2011