

COMPENDIUM

NUTRIENT MANAGEMENT ACT, 2001

(Ministry of Agriculture, Food and Rural Affairs)

Purpose:

The purpose of the proposed legislation is to enable the Lieutenant Governor in Council to make regulations establishing standards with respect to the management of materials containing nutrients and requiring farmers and other generators and users of such materials to comply with those standards. It also provides for the enforcement of the standards by provincial officers. The Bill contains amendments to the Environmental Protection Act, the Highway Traffic Act, the Ontario Water Resources Act and the Pesticides Act and consequential amendments to the Farming and Food Production Protection Act, 1998.

Part I - Definitions and Administration:

Section 1 contains definitions of the terms that are used in the proposed legislation. These terms include “agricultural machinery and equipment”, “agricultural operation”, “farm animal”, “farmer”, “natural environment”, “nutrient”, “nutrient management plan” and “nutrient management strategy”.

Section 2 authorizes the Minister who is responsible for the administration of the Act (the minister) to appoint “Directors” for the purpose of administering the Act and the regulations.

Section 3 authorizes the Minister to designate provincial officers to conduct investigations and prosecute offences. Provincial officers are designated as peace officers for the purpose of enforcing the Act.

Section 4 authorizes the Minister to appoint analysts for the purposes of the Act.

Part II – Management of Materials Containing Nutrients and Regulations Respecting Farm Animals:

Section 5 authorizes the Lieutenant Governor in Council to make regulations respecting the management of materials containing nutrients, establishing standards respecting farm practices and other uses to be followed by users of nutrients and requiring farmers and other generators and users of nutrients to comply with the standards.

Subsection 5(2) sets out the types of regulation that could be made or may be made to regulate the management of materials containing nutrients. The subjects include the buildings used for storing nutrients, qualifications and testing for persons who handle nutrients, licensing of persons who apply nutrients to land, nutrient management plans, nutrient management strategies, environmentally responsible practices, administrative procedures and the establishment of local advisory committees.

Clause 5(2)(z) provides for the establishment and operation of local advisory committees by regulation.

Subsection 5(3) authorizes Directors under the Act to issue, amend, suspend and revoke certificates, licences or approvals and impose or amend the conditions attached to such documents.

Section 6 authorizes the Lieutenant Governor in Council to make regulations to control various activities associated with the use of nutrients, keeping farm animals out of watercourses and the disposal, storage and transportation of dead farm animals. Such regulations may be used to protect human health and water quality.

Part III – Hearing by Tribunal:

Section 7 requires a Director to give notice of certain decisions that affect the holder of a certificate, licence or approval to the holder of the certificate licence or approval.

Subsections 8(1) to (3) give the holder of a certificate, licence or approval or a person who is subject to an order under the Act the right to appeal a decision of a Director to the Environmental Review Tribunal in accordance with the requirements of the section.

Subsection 8(4) provides that there is no right of appeal when a Director has issued the certificate, licence or approval for which the person had applied.

Subsections 8(5) to (8) establish procedural rules regarding notice of appeal.

Subsection 9(1) provides that the commencement of a hearing before the Tribunal does not automatically stay the operation of the certificate, licence, approval or order being appealed.

Subsections 9(2) to (8) govern the Tribunal's powers to grant and remove stays and impose conditions on granting or removing a stay.

Subsection 10(1) sets out the powers of the Tribunal when it hears an appeal.

Subsection 10(2) gives a party to an appeal the right to appeal a decision or order of the Tribunal to the Divisional Court on a question of law.

Subsection 10(3) gives a party to an appeal the right to appeal a decision or order of the Tribunal to the Minister on any matter other than a question of law and authorizes the Minister to confirm, alter or revoke the decision of the Tribunal in the public interest.

Subsections 10(4) and (5) deal with staying a decision that is under appeal to the court or the Minister.

Part IV – Inspections and Orders:

Sections 11 to 27 of the Act establish the rules that govern inspections of real and personal property by provincial officers. These provisions are similar in most respects to those found in the Environmental Protection Act, the Ontario Water Resources Act and the Pesticides Act.

These rules require a provincial officer to identify her or himself on request and authorize a provincial officer to inspect without a warrant, remove documents or data, inspect vehicles and vessels, exercise powers under other environmental protection legislation, apply to a justice for an order to authorize an inspection, use reasonable force under certain conditions, dispose of things that have been seized, use tracking devices, seek assistance from police forces and keep information confidential.

Subsection 17(3) contains a definition of “adverse effect”. **Note:** The term “adverse effect” is used in other environmental legislation such as the Environmental Protection Act and the Pesticides Act. The Supreme Court of Canada has considered the meaning of “adverse effect” and has concluded that environmental protection is a legitimate concern of government, and is a very broad subject which does not lend itself to precise codification and that the legislature is justified in choosing equally broad legislative language in order to provide for the necessary degree of flexibility. The court also concluded that the provision should not be interpreted to capture pollution that would have only a trivial or minimal impact on the natural environment, human health or safety or property.

Sections 28(1) authorizes a provincial officer or a Director to issue a preventive order to a person who owns or has management and control of land or premises to prevent or reduce an adverse effect that could result from a discharge of materials containing nutrients into the natural environment except a discharge into the air.

Subsections 28(2) and (3) describe the information that must be included in an order made under subsection 28(1)

Subsection 29(1) authorizes a provincial officer or a Director to issue a compliance order when he or she has reasonable grounds to believe that a person has contravened a provision of the Act or the regulations. A compliance order may require the recipient to comply immediately or within the time specified in the order.

Subsection 29(2) describes the information that must be contained in an order issued under subsection 29(1).

Subsection 29(3) provides for service of such orders and subsection 29(4) requires the person who receives such an order to comply with it within the time specified in the order.

Section 30 makes provision for the amendment of orders made under sections 28 and 29 and requires that notice of such changes be given to the affected person.

Subsection 31(1) authorizes a person to whom an order by a provincial officer under section 28 or 29 is directed to request a Director to review the order.

Subsections 31(2) to (9) establish the procedural requirements associated with a request for the review of an order.

Part V – Remedial Work Done by Ministry:

Section 32 authorizes the Minister to cause to be done anything required to be done by an order or decision under sections 28, 29, 30 or 31 even if a stay has been granted.

Section 33 establishes the conditions under which a Director may cause work to be done pursuant to an order or decision issued under sections 28, 29, 30 or 31 that has not been stayed.

Subsection 33(2) requires a Director to give notice of her or his intention to cause work to be done to each person named in the order or decision who is required to do something.

Subsection 33(3) requires a person who receives such a notice to refrain from doing the thing referred to in the notice without the permission of the Director.

Subsection 34(1) gives a person who is responsible for doing a thing under section 33 to enter lands or premises that are used for the disposal of materials containing nutrients without a warrant to carry out work authorized by section 33 under certain circumstances.

Subsection 34(2) authorizes a justice of the peace to issue a warrant authorizing entry onto land or premises for the purposes of carrying out work if he or she is satisfied on evidence under oath that such entry is necessary.

Subsection 34(3) sets out the time when the warrant may be carried out and expiry of the warrant.

Subsection 34(4) sets out the process to extend the time for carrying out the warrant.

Subsection 34(5) authorizes a provincial officer to call upon police officers and to use force if necessary to carry out the work.

Subsection 34(6) authorizes the use of assistants to carry out work.

Subsection 34(7) authorizes a justice to receive and consider applications for an order or renewal of an order under this section to do so without notice to the owner or occupant of the land.

Subsection 34(8) requires persons who enter land or premises for the purpose of carrying out work to identify themselves to the owner or occupier of the land or premises.

Section 35 authorizes the Minister who causes anything to be done under section 33 to make an order requiring a person to pay the costs of having the thing done and sets out the particulars of such an order.

Section 36 establishes the procedure to be followed to enforce an order to pay costs by filing it with the Superior Court of Justice.

Section 37 establishes the procedure to be followed to recover the costs of doing work by giving a municipality a lien on land. It allows a municipality to recover such costs in the same manner as arrears of municipal taxes. It makes similar provisions for land in territory without municipal organization.

Section 38 establishes the procedure to be followed in cases where work is done on land that is not owned by the person who used it to dispose of material containing nutrients. The recovery mechanisms are the same as those in section 37.

Part VI – Enforcement:

Subsection 39(1) authorizes a Director to impose administrative penalties on persons who have failed to comply with an order under the Act.

Subsection 39(2) imposes a two-year limitation period on a Director's authority to impose administrative penalties.

Subsection 39(3) sets an upper limit of \$10,000 per day on administrative penalties

Subsection 39(4) requires a Director to give a person written notice of an administrative penalty and establishes the contents of the notice.

Subsection 39(5) gives a person who is required to pay an administrative penalty the right to appeal the imposition of the penalty within 15 days and requires the Tribunal to hold a hearing.

Subsection 39(6) sets out the Tribunal's powers in such an appeal and subsection (7) makes regulations made under subsection (11) applicable to the Tribunal's decisions under subsection (6).

Subsection 39(8) provides that a person who pays an administrative penalty will not be charged with an offence in respect of the contravention or failure to which the penalty relates.

Subsection 39(9) deals with the consequences of a failure to pay an administrative penalty and subsection (10) provides for interest to be charged on unpaid penalties.

Subsection 39(11) authorizes the Lieutenant Governor in Council to make regulations governing administrative penalties. Those regulations are subject to the ceiling of \$10,000 set out in subsection 39(3).

Subsection 40(1) authorizes the Minister to apply to the Superior Court of Justice for a restraining order in situations where a person fails to comply with an order issued under the Act or fails to comply with a condition of a certificate, licence or approval.

Subsection 40(2) allows a court to issue an order prohibiting a person from continuing or repeating the act or omission for which the person was convicted.

Subsection 41(1) makes it an offence to obstruct a Director, provincial officer or other person employed by the ministry in the performance of duties under the Act.

Subsection 41(2) makes it an offence to refuse to provide information to a Director, provincial officer or other person and subsections (3) and (4) deal with submitting false or misleading information or data.

Section 42 establishes offences under the Act.

Section 43 establishes a two-year limitation period for offences under the Act or the regulations.

Section 44 establishes the procedure for serving offence notices on various persons and provides for substituted service.

Section 45 provides for service of offence notices under the Act and summonses under the Provincial Offences Act with respect to the use and operation of motor vehicles.

Section 46 permits the Crown to require that a proceeding in respect of an offence under the Act be heard by a provincial judge rather than a justice of the peace.

Subsection 47(1) provides for a penalty of not more than \$5000 per day for an individual on conviction for a first offence and on each subsequent conviction a penalty of not more than \$10,000 per day or part of a day on which the offence occurs or continues.

Subsection 47(2) provides that the penalties for corporations are \$10,000 per day for a first conviction and \$25,000 per day for a subsequent conviction.

Subsection 47(3) deals with subsequent convictions if a person has been convicted of an offence under the Act or other environmental protection legislation.

Subsection 47(4) allows a court to increase a fine in order to eliminate any monetary benefit that may have accrued to a person as a result of that person's conduct that gave rise to the offence.

Section 48 provides for the suspension of certificates, licences or approvals if a fine is not paid following a conviction for an offence under the Act, the EPA, the OWRA, the Pesticides Act or the regulations made under any of them.

Section 49 allows a court to make an order to prevent damage from continuing following a conviction and makes such an order subject to certain conditions.

Section 50 authorizes a court that convicts a person of an offence under the Act or the regulations to impose an alternate penalty such as an order that the person carry out remedial work on the environment or make a payment to a third party for the purposes of educational or remedial work

Part VII – General:

Section 51 provides that the Act does not affect the application of other environmental protection legislation in any situation where such legislation applies.

Section 52 deals with the effect of orders made under the Act on various personal representatives of the person to whom the order is directed.

Section 53 deals with the service of documents by various means.

Section 54 provides for the use of documents and reports as evidence and their acceptance as proof of the facts stated therein.

Section 55 authorizes the Minister to enter into agreements with persons outside the public service to provide services such as operating a registry, reviewing nutrient management plans or strategies, issuing certificates, licences and approvals and any other prescribed work. This section permits alternate service delivery and establishes the rules under which such services would be provided.

Section 56 provides that persons who provide alternate service delivery are not agents of the Crown and that the Crown is not responsible at law for their actions.

Section 57 authorizes the Minister to establish the fees that are payable in respect of matters under the Act and imposes an obligation to pay those fees.

Section 58 authorizes the Lieutenant Governor in Counsel to make regulations dealing with various matters affecting the provisions of the Act and the administration of the Act.

Section 59 establishes certain rules that govern the regulations made under the Act.

Section 60 provides that regulations made under the Act supercede municipal by-laws that deal with the same subject matter as the regulations and that such by-laws are inoperative while the regulations are in force.

Part VIII – Complementary Amendments:

Sections 61 contains amendments to subsection 6(2), subsection 48(1), section 156.2, section 165, subsection 174(2), section 188 and subsection 191(1) of the Environmental Protection Act that are necessary to make the operation of the Act fit with the operation of that Act.

Subsections 62(1) and (2) contain amendments to section 2 of the Farming and Food Production Protection Act, 1998. New subsection (1.1) provides that a farmer shall be deemed not to be carrying on a normal farm practice if the practice is inconsistent with a regulation made under the Agricultural Operations Standard Act, 2000.

New subsection (1.2) authorizes a judge of the Superior Court of Justice who has been asked to make a determination as to whether a farm practice is a normal farm practice to refer the matter to the Normal Farm Practice Protection Board and require the Board to report to the judge.

New section 6.1 places a limitation on the Board's authority to determine whether a farm practice is a normal farm practice if the practice is consistent with a regulation made under the Nutrient Management Act, 2001.

Section 63 amends paragraph 4 of subsection 62(15.1) of the Highway Traffic Act to include the vehicles being operated by provincial offers designated under new Act among those that can show a red light to the front.

Section 64 makes amendments to section 15.2, section 24, clause 110(b) and subsection 113(1) of the Ontario Water Resources Act to make it coincide with the new Act.

Section 65 of the Act makes amendments to section 19.2, section 26, subsection 45(4) and subsection 47(1) of the Pesticides Act to make it coincide with the new Act.

Part IX - Commencement and Short Title:

Section 66 provides that the Act comes into force on a day to be named by proclamation of the Lieutenant Governor in Council.

Section 67 contains the short title of the Act.