

W. Tayloe Murphy, Jr.
Secretary of Natural
Resources



Joseph H. Maroon
Director

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

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November 2, 2004

Philip A. Leone
Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Capitol Square
Richmond, Virginia 23219

Dear Mr. Leone:

The Virginia Department of Conservation and Recreation (DCR) appreciates the opportunity to provide the attached comments on the October 21, 2004 exposure draft of the JLARC *Review of Nutrient Management Planning in Virginia* report. We wish to commend the JLARC staff team on the quality of the report they have prepared and their understanding of this issue. As the report indicates, proper nutrient management planning has been and will continue to be relied upon to make improvements in water quality and the Chesapeake Bay, while at the same time offering economic benefits to those who employ it.

In general, DCR is supportive of the recommendations outlined in the report and will work towards implementing these actions in a timely manner and provided that staff resources are available. Several of the JLARC report recommendations may be addressed in the Department's proposed revisions to the DCR's Nutrient Management Training and Certification Regulations that are currently under review and which are set to be released in draft form in the coming weeks.

The one major weakness in the JLARC report that we noted is the omission of an evaluation of biosolids. While we understand that your staff decided to limit your research scope to other matters, DCR wishes to point out that biosolids represent a significant source of agricultural organic nutrients that is second only to poultry litter.

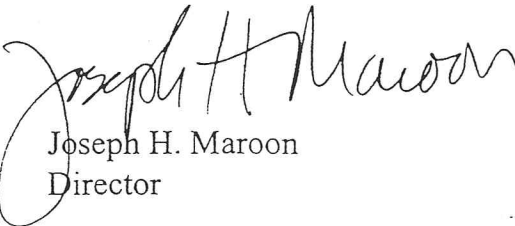
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DCR wishes to thank you and your staff for the information contained in the report and we look forward to working with you and the Commission in the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink, reading "Joseph H. Maroon". The signature is fluid and cursive, with a large initial "J" and "M".

Joseph H. Maroon
Director

cc: The Honorable W. Tayloe Murphy, Jr., Secretary of Natural Resources
Mr. Robert G. Burnley, Director, Virginia Department of Environmental Quality

Department of Conservation and Recreation

Comments Relative to the JLARC Report: Review of Nutrient Management Planning in Virginia

Recommendation (1). The Department of Conservation and Recreation should include in its Training and Certification regulations a requirement that all nutrient management plans contain a map indicating the location of waste storage facilities and fields where waste will be applied on the operation for which the plan is written as is required for confined animal and poultry feeding operations by §62.1-44.17:1 (E)(2) and §62.1-44.17:1.1 of the Code of Virginia.

• **DCR Response:** DCR concurs with this recommendation for plans related to the two permit programs listed.

Completion Date: Fall 2005, as part of current regulatory review process.

Recommendation (2). The Department of Conservation and Recreation should amend its Training and Certification regulations to require that nutrient management plans contain a legible and clearly marked map identifying all environmentally sensitive sites and buffer areas on the fields for which the plan is written.

DCR Response: DCR generally concurs with this recommendation. Implementation could increase staff time to develop NMPs and result in some increase in nutrient management planning costs to the agency.

Completion Date: Fall 2005, as part of current regulatory review process.

Recommendation (3). The Department of Conservation and Recreation, in conjunction with the Department of Environmental Quality, should analyze a sample of NMPs, to examine the extent to which the terms of existing NMPs may call for or allow over-applications

of nutrients that could be harmful to water quality. The analysis could be used to determine whether there is a need for greater stringency with regard to allowing adjustments to basic NMP recommendations.

DCR Response: DCR concurs with this recommendation and will work with DEQ in reviewing this practice as stipulated in the draft JLARC report.

Completion Date: To be determined.

Recommendation (4). The Department of Conservation and Recreation should reinstate the component within NutMan that will automatically flag instances in which crop yield values have been manually adjusted upward.

DCR Response: DCR concurs with this recommendation. For plans developed using the NutMan software program, the change should reduce review time needed to evaluate compliance of plans with the requirements of the regulations.

Completion Date: Fall, 2005.

Recommendation (5). The Department of Conservation and Recreation should reconsider the language in the Training and Certification regulations that permits farm operators to make upward adjustments to expected crop yields, and hence increase nutrient application rates, on up to 20 percent of a farm's fields based solely on previous experience. If the Department wishes to continue providing farm operators this opportunity, it should consider limiting undocumented upward adjustments to field productivity in a more restrictive manner, such as limiting changes to a percentage of acreage or requiring that the plan identify the areas and describe the agricultural activities intended to take place there. Moreover, the Department may want to consider requiring farmers to keep field productivity records.

DCR Response: DCR generally concurs with this recommendation. The Department acknowledges that upward adjustments were previously allowed as an accommodation to farm operators. However,

with the advent of very ambitious water quality goals for the Chesapeake Bay and its tributaries by 2010, such accommodations may no longer be prudent.

Completion Date: Fall 2005, as part of the current regulatory review process.

(NOTE: Recommendations 6 –10 do not apply to DCR.)

Recommendation (11). The Department of Environmental Quality, in conjunction with the Department of Conservation and Recreation, should develop a procedure for identifying potential misuse of litter that is transferred and should develop a policy to prevent it. Requiring the name and address of the poultry litter recipient should be considered.

DCR Response: DCR concurs with this recommendation and will work with DEQ to address this recommendation.

Completion Date: To be determined.

(NOTE: Recommendation 12 does not apply to DCR.)

Recommendation (13). The state may wish to consider offering financial incentives to integrators to incorporate phytase in all their feed.

DCR Response: DCR has to date provided about \$1 million in matching grants to the poultry and swine industries for the installation of Phytase injection equipment and other start-up costs for incorporating Phytase in feeds. As noted in the JLARC report, “Virginia was the first state to form a partnership with poultry producers to implement the feeding phytase”. While significant opportunity exists to reduce phosphorus levels in manure using this technology, it is clear as stated in the draft JLARC report that current usage of Phytase varies widely in the industry. While state financial incentives have already been tried, DCR believes that further discussion and engagement is needed with the poultry and swine industries in order to obtain a substantially higher use of Phytase in feed. Given the need to achieve substantial nutrient reductions, DCR believes it is critical that additional reductions be realized to the fullest extent feasible.

Completion Date: To be determined.

Recommendation (14). The Governor should issue an executive order directing State agencies and institutions to develop nutrient management plans for State-owned lands on which nutrients are applied. The Department of Conservation and Recreation should provide assistance upon request of the State's agencies and institutions concerning the proper development and implementation of nutrient management plans.

DCR Response: DCR concurs with this recommendation. A similar Executive Memorandum was issued during the Wilder Administration and provided for an initial round of nutrient management plans on many state-owned lands. Given Governor Warner's emphasis on making state government an example, a new Executive Order would again promote the need for such plans to be written. DCR would also recommend that the Executive Order call for nutrient management plans on state lands to be renewed every three years, similar to private lands. Implementation of this recommendation will require an additional FTE in nutrient management in order for DCR to offer assistance of this kind to other state agencies.

Completion Date: Completed 2007

Recommendation (15). The Department of Conservation and Recreation should conduct a review of the time required and costs incurred by plan writers to develop phosphorus-based plans. Through this review, the department should determine whether an increase in the cap amounts for plan development in the Agricultural Best Management Practices Cost-share Program need to be increased, to take into account changes in costs resulting from the development of P-based plans.

DCR Response: DCR concurs with this recommendation and will address this matter as the current regulatory review process proceeds.

Completion Date: July, 2006.

Recommendation (16). The Secretary of Natural Resources and the Department of Conservation and Recreation need to review the acreage assumptions for agriculture nutrient management plans from which the nutrient management planning reductions are anticipated by 2010. The Secretary's Office and DCR need to ensure that the nutrient reductions anticipated by the strategy: (1) are based on reasonable assumptions about the life expectancy of plans and the level of plan writing activity that can be conducted by DCR staff and other certified planners, (2) are calculated using NMP acreage figures that are reasonable relative to the total crop and hay acreage eligible for coverage by 2010, and (3) take into account slippage based on more realistic assumptions (as is planned by the Chesapeake Bay Program) regarding the proportion of written plans that can be expected to be fully implemented.

DCR Response: DCR acknowledges the legitimate concerns identified in the draft JLARC report that led to this recommendation. The Department recognizes that the assumptions and estimates are extremely ambitious and challenging and will require unprecedented levels of participation to achieve the 2010 Chesapeake Bay tributary goals. The development and implementation of the tributary strategies will include ongoing updates based on the latest information available.

Completion Date: Completed 2010

Other Significant Issues Identified by DCR in review of the draft JLARC Report:

The omission of an evaluation of the nutrient management planning practices currently utilized for biosolids weakens the JLARC report's review of the statewide nutrient management program. Biosolids, which are regulated under the State Health Department, represent a significant source of organic nutrients applied to agricultural operations that is second only to poultry litter in quantities of nutrients applied and greater than organic nutrients generated by confined hogs, dairy and beef. As such a significant source of nutrients, the JLARC Commission may wish to consider a review of nutrient management planning practices as applied to biosolids in order to complete its evaluation of the Commonwealth's nutrient management planning efforts.