

5

NUTRIENT MANAGEMENT ACT, 2002 AND REGULATIONS

(Regional Council at its meeting on September 18, 2003, amended the foregoing Clause to include the following recommendation:

- 3. *That the Region work with the affected local municipalities and the Province in finding funding to assist affected farmers.)***

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report, August 21, 2003, from the Commissioner of Planning and Development Services:

1. RECOMMENDATIONS

It is recommended that:

1. This report be received for information purposes.
2. That this report be circulated to area municipalities in York Region and the Region's Agricultural Advisory Liaison Group for their information.

2. PURPOSE

The purpose of this report is to advise Committee and Council of the Proclamation of the *Nutrient Management Act, 2002* and the filing of Regulations pursuant to the *Act*, which initially apply to new livestock operations and expansions to large livestock operations, effective September 30, 2003.

3. BACKGROUND

The *Nutrient Management Act* received Royal Assent on June 27, 2002. Subsequently, Regulations were issued on August 20, 2002 and December 2, 2002 respectively. Information meetings and public consultation sessions were held for the Draft Stage 2 Regulations during the months of December 2002 and January 2003.

Regional Planning Committee and Council has received reports on this legislation and the regulations twice over the past two years. Most recently, in February 2003, the report advised of outstanding issues with the proposed legislation and with the Regulations to the *Act*. These are discussed in the following sections of this report.

4. ANALYSIS AND OPTIONS

4.1 Implementation of the Regulations

Phased Implementation

As a result of consultation on the *Act* and the Regulations, the Regulations will be implemented over time to permit farmers and other nutrient generators to make appropriate plans and implement changes to their operations to bring them into compliance with the *Act* and the Regulations.

Initially, the following operations are subject to the Regulation:

- Large livestock operations where there are enough farm animals present to generate 300 nutrient units (NU) or more.
- Operations that are placing new barns on a separate property (previously unused by the owner for livestock production) where farm animals will generate more than 5 NU.
- Operations whose expansion means their farm animals will generate 300 NU or more.

For the operations subject to the Regulation, it will be necessary to complete, a Nutrient Management Plan (NMP) (required if storing or using manure on the land.) and/or a Nutrient Management Strategy (NMS) (required if generating manure for removal) by the deadline date. However, for those operators that pose a low risk to water resources (based on a self-evaluating survey) a short form of the NMS is available.

The phase in timeframes for completion of the NMP and NMS are September 30, 2003 for new operations with greater than 5 NU and for expanding operations where there will be greater than 300 NU. For existing large operations (> 299 NU) the phase-in date is July 1, 2005 OMAF does not have an inventory of how many operations in York Region are greater than 300 NU, since the Nutrient Unit calculation is not a one to one ratio for animals and NU. For example, the 300 NU threshold could represent a dairy operation with 300 cows (1 NU = 1 cow), or a poultry operation with greater than 45,000 hens (1 NU = 150 hens).

The legislation is also applicable however to new operations with > 5 NU. This lower threshold will apply to "lifestyle" rural residents where owners wish to keep several animals. An example in this case would be horses, where the 5 NU would represent 10 horses (1 NU = 2 horses). It is anticipated that this type of operations will create the most work for local and Regional staff, where the operators may not understand and apply the appropriate regulations.

As well, the Province has also appointed a Provincial Advisory Committee, which is charged with looking into some of the more difficult areas of nutrient management and the implementation of the *Nutrient Management Act*. The Committee will examine technical issues identified during the consultations, including standards for seasonal outdoor feedlots; offer suggestions about appropriate funding mechanisms; and make recommendations on the phase-in of the application of regulations. The government has indicated that the additional phase-in will not be earlier than 2008 and that there will be funding attached to the phase-in.

Monitoring and Enforcement

The monitoring of the *Nutrient Management Act* is the combined responsibility of both the Ontario Ministry of Agriculture and Food (OMAF) and the Ontario Ministry of the Environment (MOE) and will be carried out using a three-tiered approach:

1. Proactive farm visits by OMAF staff
2. Complaint response by OMAF staff
3. Investigation and, potentially, prosecution by MOE

However, for those municipalities with Nutrient Management By-laws (see discussion under Local Impact) local municipal building inspectors also play a key role, in that building permits for new or expanding barns will potentially be the first contact and notice that the *Nutrient Management Act* Regulations will be applied. In this case, it will

be the responsibility of the Building Inspector to determine whether the proposed structure or the expansion triggers the Regulations.

In addition to the above, the *Act* and Regulations provide for the Province to order environmental clean up and remediation of sites where contravention of the *Act* and/or Regulations have occurred. In the event that an owner cannot or will not pay for the costs of cleanup, the *Act* provides for such costs to be recovered through municipal taxes. If this recourse is taken then additional costs and responsibility will be borne by area municipalities.

Training

The Province has also committed to provide training for farm operators and for practitioners to assist them in the preparation of Nutrient Management Strategies and Plans and for municipal officials to assist them in the implementation of the *Act* and the Regulations. The OMAF staff is currently developing a schedule of training courses, however, the background information provides dates by which certain individuals (such as practitioners) must have completed the training.

4.2 Regional Issues

The report endorsed by Committee and Council in February 2003, after consultation with the Region's Agricultural Advisory Liaison Group and Regional staff, raised a number of issues. These are shown below in Table 1 with the responses contained in the recent proclaimed legislation identified in the second column.

Table 2
Issues raised by York Region in February 2003 Report

Issue	Response in Legislation/Regulation or background information
Septage	
• Legislation proposes to ban the land application of untreated septage over a five-year period.	• York Region does not hold any permits to apply untreated septage on land within the Region • If York applies bio-solids to land, a Municipal Nutrient Strategy will eventually be required • Not part of current implementation

Economic Impact and Viability of Agricultural Industry

- Cost associated with completing NMP's and NMS's as well as implementing those plans is an issue.
- Consultants may need to be hired to complete these plans on behalf of the producers. Recommended that the Province minimize the impact by committing financial assistance to operators to help them meet the new standards proposed.
- Phased implementation program
- No new financial programs identified at this stage

Complexity of the NMP and NMS Content Requirements

- Agricultural Advisory Liaison Group indicated that the NMP and NMS are complex and Provincial computer software not user-friendly
- Recommend that training and instructions be provided for individuals who wish to complete their own plans financial assistance should be provided to offset some of the cost of hiring a consultant
- OMAF to set-up a 24-hour support hot line and with staff to answer questions
- NMS and NMP proposals now include use of a "short-form"
- Training program being developed
- Ministry information numbers available - but likely not 24 hour assistance

Local Advisory Committee

- Upper tier municipalities may by by-law, establish Local Advisory Committees to mediate disputes and to deal with Nutrient Management issues arising within the municipality.
- Not anticipated there will be many disputes arising from implementation in York Region,
- Agricultural Advisory Liaison Group can mediate on an ad hoc basis with the assistance of staff who are trained in conflict resolution
- May require delegation by-law under the legislation

		• Continue to monitor situation
Transition Program		
• Complexity and scope of the Regulations reinforces the need for a transition program	• Phased implementation enacted	
Groundwater and Source Protection		
• Provision for land application standards and groundwater protection • Groundwater management strategy will address the requirements of the Act and Regulations • Comments on ground and surface water sent to Province	• Not part of current implementation. • Will need to be co-ordinated with Provincial Groundwater Source Protection initiatives	

4.3 Relationship To Vision 2026

The intent of the Nutrient Management Act and Regulations is in line with the *Enhanced Environment, Heritage and Culture* goal of *Vision 2026*. Implementation of the legislation will ensure that the following objectives of the Vision document are met:

- Protecting the quality and quantity of groundwater, surface water and streams
- Enhancing awareness of the importance of groundwater
- Complying with and maintaining high standards for drinking-water quality

5. FINANCIAL IMPLICATIONS

There are no net impact to the Region associated with the implementation of the *Nutrient Management Act* and Regulations.

6. LOCAL MUNICIPAL IMPACT

While the majority of responsibility for enforcement of the *Nutrient Management Act* falls to the Ministry of Agriculture and Food and the Ministry of the Environmental, area municipalities will have front-line responsibility when building permits are issued for new farm structures. Training sessions are being prepared for municipal staff in this regard. As well, area municipal planning staff from the Towns of East Gwillimbury, Georgina, and Whitchurch-Stouffville and the Township of King have been consulted during the preparation of this report.

As previously indicated, the *Act* and Regulations provide for the Province to order environmental clean up and remediation of sites where contravention of the *Act* and/or Regulations have occurred. In the event that an owner cannot or will not pay for the costs of cleanup, these costs may be recovered through municipal taxes with an increase in municipal costs and the potential for litigation between the Province and owner over the collection.

7. CONCLUSION

The *Nutrient Management Act* and Regulations are intended to improve the quality of groundwater and surface water resources through a better management of land applied nutrient materials. The Region has raised issues previously to the Province and the recent proclamations and the phased in implementation address a number of the issues. Regional

staff will continue to monitor the implementation and assist area municipalities where possible.

It is recommended that this report be received for information purposes and circulated to the Region's Agricultural Advisory Liaison Group and area municipalities for their information.

The Senior Management Group has reviewed this report.