



WASHINGTON SUBURBAN SANITARY COMMISSION

COMMISSION SUMMARY

AGENDA CATEGORY: Intergovernmental Relations Office

ITEM NUMBER: 2

DATE: March 16, 2011

SUBJECT	HB 24 Agriculture – Sludge – Timing of Winter Application
SUMMARY	This Legislation would require the Department of Agriculture to adopt regulations establishing criteria for the timing of the winter application of sludge that are the same as or substantially similar to the criteria adopted for the winter application of animal manure; and generally relating to the timing of the winter application of sludge.
SPECIAL COMMENTS	
CONTRACT NO. / REFERENCE NO.	N/A
COSTS	N/A
AMENDMENT/ CHANGE ORDER NO. AMOUNT	N/A
MBE PARTICIPATION	N/A
PRIOR STAFF/ COMMITTEE REVIEW	GM/CEO Director of Intergovernmental Relations
PRIOR STAFF/ COMMITTEE APPROVALS	Production Office Engineering & Construction (Planning Division)
RECOMMENDATION TO COMMISSION	Oppose w/ Amendments
COMMISSION ACTION	

HOUSE BILL 24

M4
HB 813/10 – ENV

11r0813

By: **Delegate O'Donnell**
Introduced and read first time: January 13, 2011
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 3, 2011

CHAPTER _____

1 AN ACT concerning

2 **Agriculture – Sewage Sludge – Timing of Winter Application**

3 FOR the purpose of requiring the Department of Agriculture to adopt regulations
4 establishing criteria for the timing of the winter application of sewage sludge
5 that are the same as or substantially similar to the criteria adopted for the
6 timing of the winter application of animal manure; providing for a delayed
7 effective date; and generally relating to the timing of the winter application of
8 sewage sludge.

9 BY repealing and reenacting, without amendments,
10 Article – Agriculture
11 Section 8–803.1(e) and (f)
12 Annotated Code of Maryland
13 (2007 Replacement Volume and 2010 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Agriculture
16 Section 8–804(b)
17 Annotated Code of Maryland
18 (2007 Replacement Volume and 2010 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1

Article – Agriculture

2 8–803.1.

3 (e) (1) By December 31, 2001, a person who, in operating a farm, uses
4 chemical fertilizer, shall have a nutrient management plan for nitrogen and
5 phosphorus that meets the requirements of this subtitle.

6 (2) (i) By December 31, 2001, a person who, in operating a farm,
7 uses sludge or animal manure, shall have a nutrient management plan for nitrogen.

8 (ii) By July 1, 2004, a person who, in operating a farm, uses
9 sludge or animal manure, shall have a nutrient management plan for nitrogen and
10 phosphorus.

11 (f) (1) By December 31, 2002, a person who, in operating a farm, uses
12 chemical fertilizer, shall comply with a nutrient management plan for nitrogen and
13 phosphorus that meets the requirements of this subtitle.

14 (2) (i) By December 31, 2002, a person who, in operating a farm,
15 uses sludge or animal manure, shall comply with a nutrient management plan for
16 nitrogen that meets the requirements of this subtitle.

17 (ii) By July 1, 2005, a person who, in operating a farm, uses
18 sludge or animal manure, shall comply with a nutrient management plan for nitrogen
19 and phosphorus that meets the requirements of this subtitle.

20 8–804.

21 (b) **(1)** In consultation with the Nutrient Management Advisory
22 Committee, the Department shall by regulation:

23 **[(1)] (I)** Prescribe the criteria, form, and content for certified
24 nutrient management plans applicable to licensees and certificate holders;

25 **[(2)] (II)** Establish continuing education requirements for certified
26 nutrient management consultants and persons receiving vouchers of completion under
27 § 8–803.3 of this subtitle; and

28 **[(3)] (III)** Adopt guidelines and requirements for licensees and
29 certified nutrient management consultants on record keeping and on reporting
30 requirements to the Department on nutrient management plans.

31 **(2) REGULATIONS ADOPTED BY THE DEPARTMENT UNDER THIS**
32 **SUBSECTION SHALL ESTABLISH CRITERIA FOR THE TIMING OF THE WINTER**
33 **APPLICATION OF SEWAGE SLUDGE THAT ARE THE SAME AS OR SUBSTANTIALLY**

1 SIMILAR TO THE CRITERIA ADOPTED FOR THE TIMING OF THE WINTER
2 APPLICATION OF ANIMAL MANURE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 ~~October 1, 2014~~ July 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

AMENDMENTS TO HOUSE BILL 24
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Agriculture” insert “sewage”.

AMENDMENT NO. 2

On page 1, in line 4, after “of” where it appears for the second time, insert “sewage”; and on the same page, in line 6, after “manure;” insert “providing for a delayed effective date;”; and in line 7, after “of” insert “sewage”.

AMENDMENT NO. 3

On page 2, in line 26, after “(2)” insert “EFFECTIVE JULY 1, 2014,”; and in line 28, after “of” insert “sewage”.

HOUSE BILL 813

M4

0lr2230

By: **Delegates O'Donnell, Aumann, Dwyer, Jennings, Lafferty, Sossi, and Stein**
Introduced and read first time: February 9, 2010
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture – Sludge – Timing of Winter Application**

3 FOR the purpose of requiring the Department of Agriculture to adopt regulations
4 establishing criteria for the timing of the winter application of sludge that are
5 the same as or substantially similar to the criteria adopted for the timing of the
6 winter application of animal manure; and generally relating to the timing of the
7 winter application of sludge.

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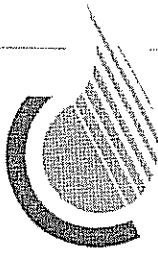
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28 APPLICATION OF SLUDGE THAT ARE THE SAME AS OR SUBSTANTIALLY SIMILAR
29 TO THE CRITERIA ADOPTED FOR THE TIMING OF THE WINTER APPLICATION OF
30 ANIMAL MANURE.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2010.



Washington Suburban Sanitary Commission

14501 Sweitzer Lane • Laurel, Maryland 20707-5902

COMMISSIONERS
Gene W. Counihan, Chair
Joyce Starks, Vice Chair
Prem P. Agarwal
Antonio L. Jones
Hon. Adrienne A. Mandel
Dr. Roscoe M. Moore, Jr.

GENERAL MANAGER
Jerry N. Johnson

The Honorable Maggie McIntosh
Chair, Environmental Matters Committee
Maryland House of Delegates
House Office Bldg., Rm. 251
6 Bladen St.
Annapolis, MD 21401-1912

RE: HB 813 – Agriculture Sludge – Timing of Winter Application

Dear Chairwoman McIntosh:

The Washington Suburban Sanitary Commission (WSSC) writes today regarding its opposition to HB 813 – Agriculture Sludge – Timing of Winter Application. The Commission believes the legislation to be unnecessary due to the existence of a highly effective program currently administered by the MDE. Additionally, this legislation could potentially eliminate the possibility of applying biosolids during one-third of the calendar year. The potential impact, both fiscally & operationally would be enormous to our ratepayers.

The Commission urges an unfavorable report.

Sincerely,

Kirk Wineland, Esq.

Director

Intergovernmental Relations Office

HB 351 Chesapeake Bay Restoration Consumer Retail Choice Act of 2010 (SB 462)

Prohibiting a store from providing disposable carryout bags unless the bags meet specified requirements; requiring a store to charge and collect a fee for each disposable carryout bag the store provides to a customer; requiring the operator of a store to remit a specified amount of money to the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund; requiring the Department of the Environment to conduct public information and outreach campaigns; authorizing the use of specified funds; providing for a delayed effective date; etc.

HB 351 Bill Status

House 1/27/10 First Reading Economic Matters & Environmental Matters
 2/4/10 Re-assigned Environmental Matters & Economic Matters
 2/17/10 Hearing 3/10 at 1:00 p.m. Environmental Matters
 3/27/10 Unfavorable Report by Environmental Matters

Senate

HB 468 Off-Shore Wind Generation - Qualified Submerged Renewable Energy Lines (SB 282)

Exempting specified qualified submerged renewable energy lines from a specified prohibition in a Beach Erosion Control District under specified circumstances; requiring specified energy lines to obtain a certificate of public convenience and necessity under specified circumstances; requiring the Public Service Commission to conduct specified proceedings and consider specified factors in connection with a certificate for specified energy lines; and defining a term.

HB 468 Bill Status

House 1/29/10 First Reading Economic Matters
 2/3/10 Hearing 2/16 at 1:00 p.m.
 Did not crossover by 3/29/10

Senate

HB 813 Agriculture - Sludge - Timing of Winter Application

WSSC voted to OPPOSE this bill at Commission meeting 3/17/10. WSSC sent letter of Opposition 3/22/10.

Requiring the Department of Agriculture to adopt regulations establishing criteria for the timing of the winter application of sludge that are the same as or substantially similar to the criteria adopted for the timing of the winter application of animal manure. (*WSSC continues to track this bill very closely for any possible implications for future biosolids or more restrictive requirements.*)

HB 813 Bill Status

House 2/9/10 First Reading Environmental Matters
 2/10/10 Hearing 2/24 at 1:00 p.m.
 3/26/10 Unfavorable Report by Environmental Matters

Senate

HOUSE BILL 24

M4
HB 813/10 – ENV

1hr0813

By: **Delegate O'Donnell**
Introduced and read first time: January 13, 2011
Assigned to: Environmental Matters

A BILL ENTITLED

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2 **Agriculture – Sludge – Timing of Winter Application**

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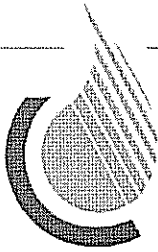
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Washington Suburban Sanitary Commission

14501 Sweitzer Lane • Laurel, Maryland 20707-5901

COMMISSIONERS
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Dr. Roscoe M. Moore, Jr.

GENERAL MANAGER
Jerry N. Johnson

February 18, 2011

The Honorable Maggie McIntosh
Chair, Environmental Matters Committee
Maryland General Assembly
House Office Building, Room 251
6 Bladen Street
Annapolis, MD 21401-1912

Re. HB 24 Agriculture – Sludge – Timing of Winter Application

Dear Chairwoman McIntosh:

I am writing in on behalf of the Washington Suburban Sanitary Commission on HB 24 which directs the Department of the Agriculture to adopt regulations that establish criteria for the winter application of sludge that are similar or identical to criteria adopted for the winter application of animal manure. While the majority of sludge from WSSC facilities is currently transported out of state, some is applied locally and we believe that a comprehensive regulatory program already exists to address all land application of sewage sludge in Maryland.

The regulations adopted pursuant to the Agricultural Article would, at a minimum, be duplicative of the existing state restrictions on the land application of sewage sludge established by the Environment Article. Further, regulations already adopted were established for the express purpose of management and control of any land application of sewage sludge. For the past several years the Department of the Environment (MDE) has been working with all affected stakeholders to develop further amendments to the existing restrictions required for land application before a sewage sludge utilization permit can be issued. Those regulatory changes are still in the process of being finalized.

That current program administered by MDE is a highly regulated program based on extensive technical and scientific data and staffing expertise to ensure sound oversight of land application and enforcement actions, where necessary or appropriate, to guarantee adherence to regulatory requirements. To the extent that there are any concerns with how the MDE program restricts the winter application of sewage sludge, the appropriate venue for any modification to the existing restrictions is the MDE regulations that govern the application of sewage sludge.

The Washington Suburban Sanitary Commission therefore cannot support HB 24 in the absence of a consensus on amendments that would address our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Wineland". The signature is fluid and cursive, with a large initial "K" and a distinct "W".

Kirk Wineland, Esq.

WSSC Director of Intergovernmental Relations

- Cc: Del. Barbara A. Frush
Del. Anne Healey
Del. Marvin E. Holmes, Jr.
Del. Doyle L. Niemann
Del. James W. Gilchrist
Del. Alfred C. Carr, Jr.



Maryland Association of Municipal Wastewater Agencies, Inc.

Harford County
212 S. Bond Street
Bel Air, Maryland 21014
Tel: 410-638-3300 Fax: 410-638-3024

BOARD MEMBERS

Julie Pippel
President

Steve Gerwin
Vice President

Joel Caudill
Secretary/Treasurer

Mike Bonk
J.L. Hearn
Jacki Meiser

February 9, 2011

The Honorable Maggie McIntosh
Chair, Environmental Matters Committee
Maryland General Assembly
House Office Building, Room 251
6 Bladen Street
Annapolis, MD 21401-1912

Re: House Bill 24 (Agriculture – Sludge – Timing of Winter Application)

MEMBER AGENCIES

Anne Arundel County
Allegany County
City of Baltimore
Baltimore County
Town of Berlin
Cecil County
Charles County
City of Cumberland
DC Water
Frederick County
City of Fruitland
City of Hagerstown
Harford County
Howard County
Ocean City
Pocomoke City
Queen Anne's County
St. Mary's MET COM
City of Salisbury
Somerset County
Washington County
WSSC

Dear Chairman McIntosh:

On behalf of the Maryland Association of Municipal Wastewater Agencies (MAMWA), I am writing to convey MAMWA's concerns and to recommend amendments to HB 24, which would require the Department of Agriculture (MDA) to regulate the winter application of biosolids in a manner substantially similar to animal manure.

MAMWA is concerned about potential adverse impacts on municipal wastewater treatment operations and our members' ratepayers. As an alternative, we believe that the Department of the Environment (MDE) is in a better position to consider and minimize such impacts as part of its ongoing process to update its biosolids use regulations and would recommend an amendment to that effect.

MDA's manure restrictions preclude land application for three and one half months each winter. We believe that extending a similar restriction to biosolids would be impractical. Although in theory there are two alternatives to winter application – storage or landfilling – in our experience neither is viable as a practical matter.

CONSULTANT MEMBERS

Black & Veatch
Camp, Dresser & McKee
CH2M Hill
Earth Tech
Greeley and Hansen
PBS&J
Whitman, Requardt & Assoc.

Regarding the construction of storage, many treatment plants are located on sites or in areas with space constraints. Furthermore, past experience in our industry has shown that efforts at siting new large biosolids storage facilities would likely meet significant citizen opposition.

GENERAL COUNSEL
AquaLaw PLC

Even at sites where it is feasible to construct storage for the winter period, the bill would likely result in intensive truck traffic to empty the storage facility quickly during the short period between March 1 and spring planting. In addition to the capital cost of constructing storage facilities, we would also

The Honorable Maggie McIntosh
February 9, 2011
Page 2

anticipate higher operating costs due to the vendor price increases for hauling and applying the stored biosolids in a compressed timeframe after winter.

Landfilling is also not the solution in our opinion. Not only does landfilling raise operating costs significantly, but landfills typically limit the amount of biosolids they are willing to accept. We do not believe that landfills would accept the large volume of biosolids generated in larger urban areas. Furthermore, landfilling runs counter to the goal of recycling this valuable organic material.

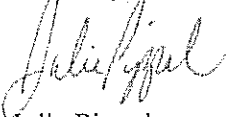
In our opinion, the State has an effective regulatory program for biosolids land application administered by MDE. MDE's regulations include provisions governing winter application, including buffer zones from nearby waterbodies, adverse weather condition requirements, special maximum slope restrictions, plowing restrictions, and others. COMAR § 26.04.06.09.A(11)(j)-(o).

Significantly, MDE is currently in the process of updating its biosolids regulations. MAMWA recommends referring consideration of further wintertime restrictions to MDE and its ongoing rulemaking process. Similarly, given MDE's existing regulations on winter application and MDE's familiarity with the treatment facilities and operational practices in question, MAMWA respectfully recommends that such efforts be consolidated at MDE, which is the permit issuing authority for biosolids utilization and the bill be drawn to the Environment Article (§ 9-230(b)).

In closing, MAMWA members are committed to acting as good environmental stewards. As we work to treat municipal wastewater to high standards, we ask the Committee to take into account the practicality of further restrictions on our operations during the winter months and the higher costs that would be passed on to the public and include such factors in any bill governing further restrictions on wintertime application.

Thank you for your consideration.

Sincerely,



Julie Pippel
President

Copy to:

House Environmental Matters Committee Members
MAMWA Members
Christopher D. Pomeroy, Esq., AquaLaw
Lisa M. Ochsenhirt, Esq., AquaLaw



MARYLAND MUNICIPAL LEAGUE
The Association of Cities and Towns

TESTIMONY

February 8, 2011

Committee: House Environmental Matters

Bill: HB 24 – Agriculture – Sludge – Timing of Winter Application

Position: Support with Amendment

Reason for Position:

The Maryland Municipal League supports HB 37 with an amendment. The bill requires the Department of Agriculture to adopt regulations establishing criteria for the timing of the winter application of sludge that are the same as or substantially similar to the criteria adopted for the timing of the winter application of animal manure.

The Maryland Municipal League is supportive of reasonable measures to protect and promote the health of the Chesapeake Bay. However, before such measures are put in place, a process to adopt regulations specific to individual situations must be followed so that all aspects and consequences of such actions have been discussed and analyzed to measure the impact on all affected parties. The League is concerned that by passing legislation that mandates that the practice of applying sludge be EXACTLY the same as the winter application of animal manure, local governments that have relied on this practice for years will incur significant additional costs.

If this bill passes as drafted, there is a good chance that local governments could find themselves with no option to dispose of sludge other than the construction of large and expensive storage facilities to house the sludge, when in fact, other options could be adopted to provide added flexibility that would both protect the Bay and provide less expensive means to safely apply sludge. Therefore, the League respectfully requests the following amendment:

26 (2) REGULATIONS ADOPTED BY THE DEPARTMENT UNDER THIS SUBSECTION SHALL ESTABLISH CRITERIA FOR THE TIMING OF THE WINTER APPLICATION OF SLUDGE THAT ARE THE SAME AS OR SUBSTANTIALLY SIMILAR TO THE CRITERIA ADOPTED FOR THE TIMING OF THE WINTER APPLICATION OF ANIMAL MANURE.

FOR MORE INFORMATION CONTACT:

1212 West Street, Annapolis, Maryland 21401-3635
410-268-5514 / 800-492-7121 / FAX 410-268-7004 / WEB URL www.mdunicipal.org / E-MAIL
mml@mdmunicipal.org

Scott A. Hancock
Candace L. Donoho
James P. Peck

Executive Director
Director, Government Relations
Director, Research & Information Management





MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Acting Secretary

Anthony G. Brown
Lieutenant Governor

February 9, 2011

The Honorable Maggie L. McIntosh, Chairman
Environmental Matters Committee
House Office Building, Room 251
Annapolis MD 21401

Re: House Bill 24 – Agriculture – Sludge – Timing of Winter Application

Dear Chairman McIntosh:

This is to provide information on House Bill 24, entitled *Agriculture – Sludge – Timing of Winter Application*. This Bill would require the Maryland Department of Agriculture (“MDA”) to adopt regulations that establish criteria for the timing of winter application of sewage sludge that are the same or substantially similar to the criteria enacted for animal manure. Winter application of nutrients is a concern due to the increased risk of nutrient loss to surface water runoff when it is applied at a time when there are no crops to hold and use the nutrients. Excess nutrients may result in the contamination of surface and ground water, with a variety of adverse environmental and health effects.

At the present time, MDA regulates the application of fertilizers such as manure and chemical fertilizers pursuant to the Water Quality Improvement Act of 1998. The regulations under this Act require land application to be consistent with a Nutrient Management Plan (“NMP”). The Department of Agriculture’s guidance for manure contains specific restriction on winter application, only allowing it when storage capacity is inadequate, and provides specific guidelines for applying the material. Although the regulation of sewage sludge is principally through the Department of the Environment’s (“MDE”) permitting and enforcement programs, the land application of sewage sludge is required to be performed in accordance with a Nutrient Management Plan that meets MDA’s requirements. MDE provides copies of NMPs submitted with applications for sewage sludge utilization permits to MDA for review to assure plans conform to MDA nutrient management plan requirements. It is suggested that the MDA should clarify in its law that “sludge” refers to “sewage sludge” not other sludges from industrial, water treatment, oil operations, or similar activities, as it is believed that the intent of the law relates to sewage sludge only.

MDE regulates the application of sewage sludge. Pursuant to Section 9-231 of the Environment Article, a person must have a permit from MDE to utilize Class B sewage sludge in the State, which includes land application. Any amendments to MDA’s regulations will not impact the requirement to obtain and comply with an MDE permit when land applying Class B sewage sludge. MDE’s permits currently restrict winter application of Class B sewage sludge. These restrictions prohibit application on saturated ground, under certain weather conditions, or on ground frozen to the extent that subsurface injection cannot occur. There are some exceptions under certain

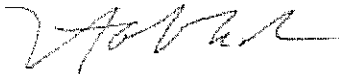
The Honorable Maggie L. McIntosh, Chairman
Page Two

circumstances. Sewage sludge may be injected into the soil through up to 6 inches of snow cover provided that there is an existing hay, pasture, sod, small grain, or cover crop and the underlying soil is not frozen to the extent that the injector shank penetration is impeded. In addition, sewage sludge may be surface applied to frozen ground only when site slopes are 6 percent or less; minimum buffer zones of 400 feet from wells, streams, other bodies of water, and property lines are maintained; sewage sludge is applied only on well drained or moderately well drained soils; sufficient vegetative cover exists on site to prevent runoff; sludge is applied on an established hay, pasture, sod, small grain, or cover crop; and the Department determines that the applicant's plan of operations for the application of sewage sludge on frozen ground does not adversely affect public health or the environment. Class B sewage sludge is treated to significantly reduce the pathogen content, but should not be considered to be sterilized, and may contain some residual pathogenic organisms such as *Staphylococcus* species. MDE's permit requirements are intended to prevent both adverse environmental and health impacts from the use of Class B sewage sludge. "Class A" sewage sludge considered by the U.S. Environmental Protection Agency and MDE to be treated to the extent that it is pathogen-free and can be safely made available through retail sales for home use. Although an individual permit for each site of use is not required, a permit is required for a facility that generates or distributes Class A sewage sludge as fertilizer.

MDE and MDA have been in discussions regarding amending regulations related to the land application of Class A and B sewage sludge. Any proposed amendments would be to ensure that excess nutrients are not being lost during land application and that there will be no exposure to pathogens. Once drafted, regulations will be promulgated through the normal AELR process and published in the *Maryland Register*, which will give stakeholders the opportunity to comment upon any proposed changes prior to adoption.

I hope this meets your needs. If I may be of further assistance, please contact me at 410-537-3304, toll-free at 1-800-633-6101, or via e-mail at htablada@mde.state.md.us.

Sincerely,



Horacio Tablada, Director
Land Management Administration

cc: The Honorable Anthony J. O'Donnell
Royden N. Powell, III, Maryland Department of Agriculture
Heather Barthel, Director, Legislation and Policy