

Section VI Plan Amendments and Transfers

1. Significant Changes in Management Requiring a Plan Amendment

In order to assure the plan is valid; a plan amendment is required when the operator of an operation falling under the act expects to make significant changes in the management of nutrients from those activities listed in the approved plan (Section 83.371(1) – (10)). Significant changes in the management of the operation that would require a plan amendment are one of the following:

- a. A net increase of greater than 10% in the AEU/acre.
 - For example, if a farmer with 100 dairy cows (weighing 1,300 lbs. each) on 50 acres brings on another 12 cows (weighing 1,300 lbs. each). This operation would go from 2.6 AEU/acre to 2.91 AEU/acre, which is a 12% increase.
- b. A change in crop management that results in a reduction of greater than 20% in nitrogen necessary for realistic expected crop yields or in the amount of nitrogen that the crops will use in the given crop year.
 - For example, if a farmer changes from all corn silage (21 ton yield) on 50 acres (which uses a total of 7,500 lbs. of nitrogen), to all wheat (60 bu. yield) on the 50 acres (which could use up to 4,500 lbs. of nitrogen), this would be a 40% reduction in nitrogen used on the operation.
- c. A change in the method of excess manure utilization arrangements.
 - For example, where a CAO changes from providing exported manure to known neighboring landowners to providing exported manure to a manure broker.
- d. Calculations in the approved plan are found to be in error, or figures used in the approved plan are inconsistent with the variables contained in the Penn State Agronomy Guide and adequate written justification for the inconsistency has not been given.
 - For example, where the planner projected that a 125-bushel corn yield will require 175 lbs. of nitrogen (instead of 125 lbs. as in the Agronomy Guide) and it was not found during the initial plan review.
 - If the plan was approved using the correct Agronomy Guide figures at the time of plan development, and the Agronomy Guide figures change after approval, the plan is not considered to be incorrect until after the 3-year review. During the 3-year update of the plan, the plan should be amended to reflect the revised variables listed in the most recent Agronomy Guide.

- e. A different BMP than that called for in the approved plan is proposed to address a manure management or stormwater management concern.
- For example, where the approved plan stated that a concreted barnyard and curbing will be used to address a barnyard problem, but when the barnyard improvement is being designed the farmer decides to instead use roof gutters and a buffer strip to address the problem.
- f. After the first 3 years of implementation, the three-year average of the actual yields are less than 80% of the expected crop yields listed in the approved plan.
- For example, if the approved plan estimated a crop yield of 150 bushels per acre but the crop yields over the first three years are 100 bu., 140 bu., and 110 bu. per acre respectively. The average yield over the first three years would be 117 bushel. This average actual yield is only 78% of what the projected yield was for the operation. Therefore, the plan would have to be amended to more closely reflect these lower yields.
 - For instances where there is a documented severe drought or other natural catastrophe which drastically reduced crop yields, at the discretion of program staff, those years may be able to be disregarded for purposes of determining an average 3-year yield for the operation. Please call the state NMA program staff to get direction on when a farmer can disregard particular years' yield data due to a natural disaster.
- g. If alternative organic nutrient sources will replace or augment nutrient sources described in the plan.
- h. If additional lands are brought into the operation through purchase, lease or renting.
- i. If there is a change in the manure management system that is expected to result in a different nutrient content that requires a change in manure application rates under Section 83.293 (relating to determination of nutrient application rates).
- j. If a change in manure application is necessary based on the reevaluation of potential phosphorus loss as part of the triennial review under Section 83.362(c) (relating to plan implementation), or a change in manure application is necessary due to the end of the phase-in period under Section 83.293(c)(3).
- k. When a BMP is not implemented within the 3 year time frame of the initial plan approval.
- l. If the plan initially called for no winter application and it is being changed to allow for the winter application of manure

2. Plan Amendment Procedure

At least every 3 years the plan shall be reviewed by an Individual, Public or Commercial Certified Nutrient Management Specialist. **If an amendment is required, it shall be developed and certified by an Individual or Commercial Nutrient Management Specialist and it shall require Conservation District Board approval, similar to the approval process for a new NMP submission.**

A plan amendment is required if the operator expects to make significant changes in the management of nutrients from those contained in the approved NMP. A significant change in management is defined in the regulations in Section 83.371 (1) – (10) and is listed above in 1. Significant Changes in Management Requiring a Plan Amendment. If any of the listed changes pertain to the operation, a plan amendment is required.

A plan amendment need not include a rewrite of the entire plan. A cover letter signed and dated by the planner and operator, along with the revised pages of the plan containing the changes, can be submitted to the Conservation District as a plan amendment.

A plan amendment shall be submitted to the reviewing agency in accordance with Section 83.361(a) of the regulations. It is the obligation of the planner to submit a copy of the initial amendment submission to DEP if the operation is a CAFO. The Conservation District will send an approval letter for amended plans obtaining Conservation District Board approval to the operator and c.c. the planner (and DEP if the operation is a CAFO). The planner is responsible for sending a copy of the approved plan amendment to DEP for their CAFO file.

3. Plan Update Procedures At least every 3 years the plan shall be reviewed by an Individual, Public or Commercial Certified Nutrient Management Specialist. If a plan update is needed to address operational or computation changes other than those described in the regulations Section 83.371(a) (1) – (10) shall be developed and certified by a Commercial or Individual Certified Nutrient Management Specialist.

- a. The Commercial or Individual Certified Nutrient Management Specialist shall:
 - make the necessary revisions,
 - review the updates with the farmer for approval before submission and
 - submit the revisions to the District for inclusion into the operation's file.
- b. The District shall evaluate these plan updates and provide any necessary direction to the operator and/or planner relating to the revised practices proposed for the operation. **Plan updates do NOT require Conservation District Board approval.**

There are two types of plan updates to keep the operator's NMP, on file at the Conservation District, current.

- a. The first option is to plan for one crop year in the initial NMP and then submit a Cover Page and updates of Appendix 3 (only the first page is required, addressing each of the manure groups used in the plan, if no changes in the

manure group are expected), Appendix 4, Appendix5, the NMP Summary and the NMP Summary Notes page. The updates would be submitted annually prior to the beginning of the next crop year (October 1st is beginning of crop year).

- b. The second option is to plan for 3 crop years in the initial NMP and then submit the six plan update components (Cover, Summary chart, Summary Notes, Appendices 3 (at least the 1st page of Appendix 3), 4 and 5) for each of the three crop years in the NMP time-frame.

Any type of update including an annual update or a 3 year update, can simply be quickly evaluated and if it is complete with no obvious errors, added to the District's official file as the operator's valid plan. Once the update has been evaluated and determined to be complete, the District sends a plan update acceptance letter to the farmer, cc. to the planner (and to DEP if the update is a CAFO). The planner is responsible for sending accepted plan updates to the DEP and the farmer. The planner should review the updates with the farmer for approval before submitting the updates to the District. The District and DEP files need to have the same plan and the plan has to be current such that it covers the current crop year and whatever future years the plan may address.

2. Amendments due to unforeseen circumstances.

In cases due to unforeseen circumstances where the operator is not able to implement the management practices outlined in the approved plan; a plan amendment shall also be required. This emergency amendment shall conform to program requirements explained in this section of the manual, be developed by a Certified Nutrient Management Specialist, and be submitted to the district within 30 days of implementation. These emergency amendments due to unforeseen circumstances will not require a formal approval of the conservation district, but shall temporarily become part of the plan until normal operations are resumed.

Unforeseen circumstances include the following:

- a. Outbreak of a contagious disease. In these cases the program recognizes that manure may not be transported off-site due to the concern of spreading a contagious disease. The program allows the operator (only in this case) to over-apply manure nitrogen in order to provide for a disposal site for the manure. In cases where manure is over-applied due to this provision, the operator shall, where applicable, plant cover crops to take up excess nutrients and harvest the cover crops to remove the excess nutrients. These operators are required to take standard soil tests each year for fields where manure is over-applied; as well as take a soil nitrogen test for 1 year beyond the cessation of excess manure application.
- b. Failures or malfunctions of equipment or storage that require a change in manure handling procedures.
- c. Other unforeseen circumstances that may cause a significant change in the management of nutrients on the agricultural operation include:

- unforeseen weather conditions which significantly impact plan implementation (i.e. hail, drought, etc.), or
- crop failure as from plant diseases or insects, or
- unanticipated loss of rented land or exporting sites that would create a reduction of greater than 20% in the nitrogen necessary for expected crop yields.

Those instances where amended activities will be implemented over a long period of time (over 3 months) or done on a continuing basis will require the amendment to be reviewed and approved by the district.

3. Plan transfers.

An approved nutrient management plan may be transferred to a subsequent owner or operator of an agricultural operation by written notification of the transfer to the conservation district, unless the transfer results in operational changes requiring a plan amendment.

If the transfer of the plan results in operational changes requiring a plan amendment as described in item "1" under this section, the plan amendment shall be developed by a properly certified individual and submitted to the conservation district for approval.