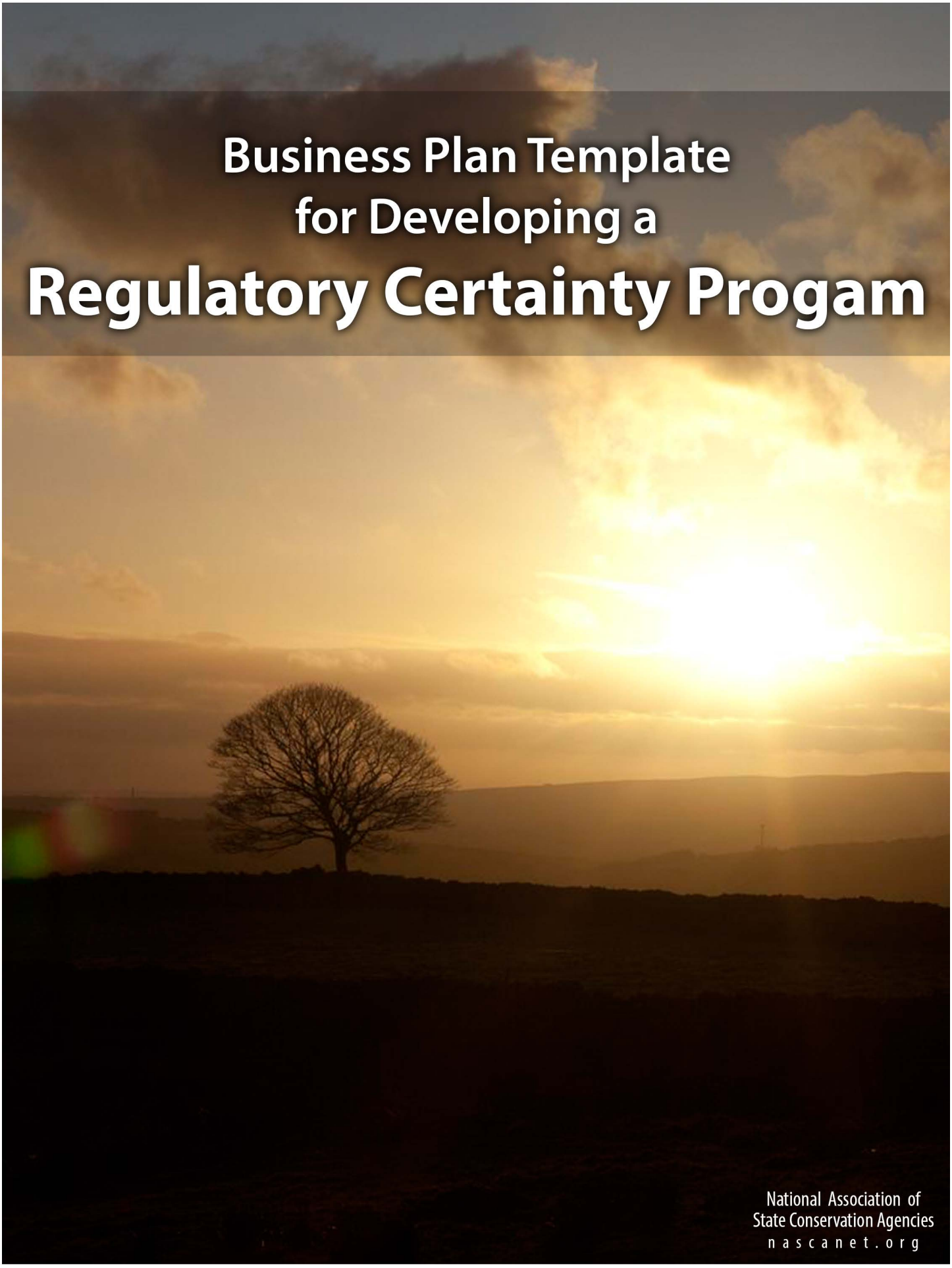
Business Plan Template for Developing a Regulatory Certainty Progam



National Association of
State Conservation Agencies
nascanet.org

Business Plan Template for Developing a Regulatory Certainty Program

Target Audience

State Conservation Agencies

Prepared by the National Association of State Conservation Agencies
May 14th, 2014
P.O. Box 211
Hartly, DE 19953
nasca@nascanet.org

I. Table of Contents

II. Introduction

It has been proven time and again that some of the most cost-effective means of improving and protecting water quality can be made by implementing conservation practices on agricultural lands. In fact, agricultural conservation practices often provide a return on investment several times greater than other means of attempting to prevent nutrients and sediment from entering our nation's waterways. Therefore, the implementation of agricultural best management practices (BMPs) will continue to play a key role in protecting watersheds, meeting TMDLs, and providing a host of other environmental benefits on our nation's working lands.

There are, however, a number of barriers which limit the number of agricultural BMPs that are actually put into practice in this country. These include:

1. Limited cost-share funding
2. The lack of understanding on the part of operators of how agricultural BMPs will provide long-term operational and financial returns to the farming operation
3. Uncertain future regulatory environment which casts doubt in the minds of many farmers as to the sustainability of agricultural operations, particularly those operations which include animal agriculture

A fairly new and intriguing part of the dialogue concerning these barriers includes providing agricultural producers with the "certainty to operate" in the face of escalating pressures from environmental regulators. This concept is now commonly referred to as "regulatory certainty" and can be defined as a voluntary approach to provide "assurances" to the agricultural community so they may conduct business in a predictable regulatory setting in exchange for their implementation of additional BMPs to achieve enhanced environmental benefits. Certainty is popular in most circles as it provides an opportunity to implement a greater suite of agricultural BMPs on working lands, grants educational opportunities for the operators of our working lands, and provides a sustainable business environment for those farmers who choose to participate in a certainty program.

Developing new State programs can often be tremendously costly and time-consuming. For example, the State of Michigan developed its MAEAP (Michigan Agriculture Environmental Assurance Program), the State's regulatory certainty program, over a period of ten years. While the program has been a huge success which other states may wish to emulate, few would wish to invest this kind of time to develop a similar program elsewhere. In an effort to accelerate the program development process for State Conservation Agencies wishing to provide regulatory certainty to agricultural producers in their states, NASCA performed an in-depth study of existing regulatory certainty programs from various states and developed this tool.

The following pages comprise a business planning template for State Conservation Agencies to use as part of their regulatory certainty program development process. This template is not

intended to result in identical programs in every state. It allows for agencies to select options and considerations that are most relevant to their operations, partners, and agricultural community. NASCA's goal is not to standardize these programs but rather to facilitate the program development process.

III. General Agency Description

What is your agency's mission statement? What are the strategic and operational goals, and how will developing a regulatory certainty program support your mission or attain your goals? Assuming that delivering conservation to privately owned working lands is one of your agency's key initiatives, this should be a relatively easy case to make. List not only goals but strategies your agency has in place to attain these goals. Then list how a regulatory certainty program in your state will help to realize your goals or even enable your agency to stretch its goals. All in all, explain how this program might be beneficial to your state and your agency by:

- supporting agriculture
- lowering production costs
- developing marketing opportunities
- escalating conservation planning
- improving environmental quality
- creating habitat
- improving stakeholder relationships
- accelerating environmental education
- leveraging public funds
- creating a more stable, predictable, and acceptable regulatory environment for producers
- sustainable natural resource management in coalesced with food, fiber, and energy production

Finally, describe your ultimate vision for your fully implemented regulatory certainty program. Provide an estimate of return on investment in developing this program, and how all stakeholders will benefit as a result.

IV. Niche

Describe why your agency is the best choice to operate a regulatory certainty program in your state. There may be a number of reasons to support this argument, some of which might include:

- Yours is a non-regulatory agency.
- Your agency can demonstrate a long-standing track record of conservation practice implementation on private working lands through voluntary, incentive-based programs.
- Your agency has direct access to or administrative overview of the state's conservation districts, which in turn have direct access to and trust with agricultural operators and landowners in your state.
- Your agency has a history of functional partnerships with many or all of the stakeholders that would be affected by this type of program.
- Your agency has a history of leveraging resources between a variety of sources at the federal, state, and local level.
- Demonstrate how your agency can implement this program more cost-effectively than any other agency in the state. Your access to conservation districts may be very helpful in advocating this point.

V. Legislation

The first question to ask when considering building a certainty program is whether your state already has legislation in place that will support a certainty program. Odds are it does not, but it happens on occasion. For example, Michigan began building its certainty program under the auspices of its Natural Resources and Environmental Protection Act of 1994. However, full implementation of the program required new legislation, which was passed in 2011, almost a decade after initial program development. Most states, however, have thus far preferred to develop legislation that will support the program in the early phases of its design. During this process be sure to review all existing laws, Executive orders, and treaties that may address any issues relevant to the proposed certainty program.

Regulatory Certainty legislation varies greatly from state to state. Some states pass legislation that is fairly simple while other state statutes are far more complex. Also, some of these laws are tremendously comprehensive while others may target only particular issues related to certainty. An example of a simple yet comprehensive law is the SB503 legislation passed in Texas in 1993. It appointed the Texas State Soil and Water Conservation Board as "the lead agency in Texas for activity relating to abating agricultural and silvicultural nonpoint source pollution." In a single legislative action Texas took the authority over agricultural and silvicultural runoff out of the hands of traditional regulators and provided producers the opportunity to comply with state water quality laws through traditional, voluntary, incentive-based programs. While this was a bold step for Texas legislators, it is a model that has not been replicated since then. Odds are that this model would be difficult to reproduce in most states today.

However, there is an element of the Texas program that has been replicated in several other states. In Texas, an operator who is in compliance with an approved conservation plan is presumed in compliance with State water quality standards. This concept is also the basis of certainty programs in Louisiana, Minnesota, New York, and Wisconsin. It is also the basis of regulatory programs in Kentucky and Oregon that are administered in producer-friendly ways. Several other certainty programs are similar but designed with slightly different outcomes. In Virginia and Maryland, for example, producers may choose to participate in the programs with the promise that those who follow approved conservation plans will not be immediately subject to new State regulations that evolve pertaining to the Chesapeake Bay. In Maine producers in compliance with an approved conservation plan are considered in compliance with municipal laws and cannot be considered a public nuisance based on complaints. Certainty programs in Michigan and Utah are based on verifications that all pollution risks on the operation have been addressed by the operator. In Massachusetts and Mississippi, programs are not statewide and focus more on water quantity than quality, although water quality comes into play as a result of the BMPs implemented.

In reviewing State regulatory certainty laws, many of the programs contain some common elements:

- Participation is voluntary.
- The State water quality agency is a supportive partner of the program.
- There is a mandatory education component of the program. In some case continuing education credits are also mandatory to maintain certification.
- There is a process to evaluate pollution risk associated with the operation.
- A plan is put into place to address these pollution risks.
- There is a formal verification or recognition process to affirm that risks have been addressed.
- Verification provides regulatory certainty.
- This regulatory certainty is defined in statute.
- There is an expiration term for this verification.
- There is a process for re-verification.
- Statute guarantees confidentiality for participants.

While this list is clearly an over-simplified summary of various certainty laws, it does provide a basic framework for drafting statute for new State regulatory certainty programs. In most cases the intricacies of the program are dealt with in regulation rather than in statute. Several existing statutes are provided in Appendix D.

In addition to drafting legislation to enable and support a regulatory certainty program, the agency will almost assuredly need to draft rules or regulations to determine how the program will operate. It is in the best interest of the program to engage partners in this process as well.

VI. Marketing Plan

The American Marketing Association defines marketing as the activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large. We believe you will find marketing to be a necessity not only during the developmental phase of your regulatory certainty program, but a critical part of your ongoing operational phase(s) as well. You will always have challenges from various stakeholders, and your continued attention to the effective marketing of your program will minimize hurdles as you progress.

Selling the Concept

Many people agree that regulatory certainty programs are good for everyone as they provide numerous "win-win" opportunities. However, any time change is suggested there will always be those who resist. Designing, developing, and implementing a regulatory certainty program is work. Someone must do the work and there are costs involved. Furthermore, a program of this nature requires buy-in from a diverse network of stakeholders. This group will invariably represent a wide array of opinion about how to best attain environmental improvements related to food and fiber production. It is vital to convince all stakeholders that the implementation of a regulatory certainty program will provide benefits versus the status quo. The "What's in it for me?" document in Appendix A may be of use as a quick reference when attempting to "sell" the program to a variety of stakeholders.

Market research

The biggest mistake you can make in setting down the path of program development is to assume you know all you need to know about all potential stakeholders. Develop a list of every potential stakeholder for your program. This list might include:

- Governor's Office
- State Department of Agriculture (various programs or sections)
- State DNR (various programs or sections)
- State DEQ or DEP
- Selected members and committees of the State Legislature
- State League of Local Governments
- County Governments
- Universities and colleges
- Extension Service
- State Association of Conservation Districts
- Tribes
- Farm Bureau
- Commodity Groups
- Livestock associations
- Nurseryman's Association
- Agricultural Marketing Organizations

- Agricultural Lenders
- NGOs with an interest in water quality, air quality, or habitat management
- Environmental Groups
- NRCS State Office/ State Technical Committee
- EPA Regional Office
- Insurance Companies
- Creditors

Learn everything you can about your program stakeholders. Peruse the internet, review publications, and gather enough data to help you get an idea about how they might react to your attempt to develop a regulatory certainty program in your state. Also research how these stakeholders or their counterparts have responded to regulatory certainty programs in other states. This type of research will help you formulate a plan on how to approach and work with each stakeholder.

Next, conduct more direct research by acquiring information directly from these stakeholders. This can be as informal as a personal visit or as structured as using surveys or employing focus groups to gather data. This more direct research will help you determine what parts of your proposed program are vital, acceptable, or unacceptable to each stakeholder. This process will slow down your program development process initially, but it may very well help you avoid impasses down the road by gaining an appreciation of each stakeholder's needs.

The ultimate goal for this marketing process is to turn stakeholders into partners. A stakeholder is affected by the program, but a partner plays an active role. Converting stakeholders to partners helps instill a sense of ownership in the program, and will not only lead to quicker acceptance but will ultimately provide a greater network of program support. Groups who are not engaged to help develop the program are more likely to become critics and challenge every step of program implementation. This is a situation where it is better to “sweat in training rather than bleed in battle.” Take the time to evaluate all stakeholders and enlist as many as partners as you can. Also be sure to develop the program so that each partner is able to incorporate its strengths and core competencies. Enter into formal signed agreements with your partners to spell out expectations from each partner, and renew these agreements on a regular basis. Remember, a partner's role is more than just helping to dictate how the program will or will not function. Partners should also bring resources of their own to the table to help build the program. An important example of this is political capital when seeking support for legislation. Another example would be using partner groups' communications specialists to help market the program. A sample partnership agreement is provided as Appendix C.

Economics

In these days of heightened scrutiny, increased transparency, and tightened budgets, it is difficult to pass legislation that comes with increased costs to constituents. Therefore, it is imperative to demonstrate the cost-effectiveness of a proposed regulatory certainty program.

Benefits

List all of the financial benefits of the program. If the benefits don't outweigh the costs, your program will have little chance of gaining acceptance from decision-makers. Therefore, take

the time to be comprehensive in this effort. Do not generalize financial benefits. Do your best to calculate the amounts of predicted economic benefits. Some estimates you may want to include are:

- Greater leveraging of public conservation dollars
- Increased private investment in conservation practices
- Reduced input costs for agricultural operations
- Improved marketing potential for agricultural producers
- Reduced regulatory program costs
- Reduced chance of penalties to agricultural operators
- Reduced discharge cleanup costs
- Improved ability to target resources
- Number of jobs created as a result of increased agricultural profitability
- Increased ability to bundle conservation practices

Costs

List all of the forecasted costs of the program. Be just as diligent in this effort, since it will be advantageous to have the answers to any questions that might be asked about the cost effectiveness of the program before they are asked. In addition to listing costs, determine which partners can provide resources to offset each of the costs. Some of the items you may want to include are:

- Personnel costs
- Contractual costs to conservation districts or other entities
- Promotional costs
- Educational costs
- Costs for public meetings, hearings

VII. Operational Plan

Program Focus

One of the first hurdles in developing a regulatory certainty program is deciding which agricultural sectors will receive the focus of the program. Will the program be designed to be a statewide program which offers certainty to all agricultural producers, or will it focus solely on one geographical or functional element? Statewide programs currently in existence often focus on one or more of the following:

- The Farmstead
- Animal Feeding Operations
- Grazing and Pasture Management
- Cropping Systems

Other programs focus on certainty from specific regulation or permitting. These might be statewide in nature or instead focus on only one particular region or commodity type. Your agency and your partners should decide which scenario will be most appropriate for your state. A summary of regulatory certainty efforts from a number of states is available in Appendix B.

This is also the stage during which you should identify the operational components of your regulatory certainty program and in general how it will work. While programs from state to state vary significantly, many have similar components, including:

- Education
- Risk assessment (conservation plan)
- Verification process (third party preferable) for a specified time period
- Process for de-certification or loss of verification
- Design programs that address primary areas of concern in the state
- Voluntary participation by cooperators
- Stakeholder involvement during program development and implementation
- Means of demonstrating and celebrating program accomplishments
- Consensus among agencies and universities about effectiveness of individual BMPs (allow for on-farm innovation)

Management

You'll need to prescribe the management regime for the program. Will it be managed solely by one state agency, or is a different management structure more appropriate? Will an advisory committee, board, or council be formed, or can an existing group perform this function? By what means will partners continue to have input into the program? If an advisory group or managing board is established, determine their function and powers, and determine the makeup of the group. This might be an ideal way to keep partner organizations engaged. Legal counsel will assuredly be required in the development of a regulatory certainty program. Be sure to determine how this counsel will be acquired.

Staffing Requirements

Determine the staffing requirements for the program. You must determine if additional staff positions will be required or if the program can operate with existing staff. Identify not only the number of positions required but the classification for each. Job descriptions should be prepared for each position dedicated to the program and an organizational chart should be developed. This is also the time to decide what functions can be performed by conservation districts, and what training agency and conservation district staffers must attain to participate.

Education

Most regulatory certainty programs in existence require cooperators to participate in some sort of mandatory educational activity in order to acquire certification or verification in the program. Many, but not all, of these programs engage the services of the land grant university in that state to address this component. In some states this is a one-time requirement while in others continuing education credits are required.

Logistical Needs

Determine office space requirements and where offices should be located as well as office hours. Also determine needs for vehicles, office equipment, field equipment, utilities, insurance, maintenance, and any other logistical needs for the program.

Budget

Develop a proposed budget for the program. When tallying costs, be sure to account for all costs associated with every activity in this business plan. Additionally, identify the proposed source of revenue for each cost. Support for the program will come much easier if the agency can leverage costs as much as possible.

Reporting

A successful regulatory certainty program must have an effective means of reporting results. The reporting system must track accomplishments and milestones, and these entities need to be reported as environmental outcomes. Reporting should include not only accomplishments on a farm by farm basis, but should quantify environmental results at watershed or sub-watershed levels. This will better enable program managers to demonstrate the effectiveness of the program as a whole. This may require a specific monitoring component of the program. Additionally, cost effectiveness of the program should be reported regularly, including resources leveraged by the program.

VIII. Summary

NASCA believes that regulatory certainty programs provide benefits for farmers, landowners, regulators, environmentalists, conservation delivery professionals, commodity groups, and the public at large. These programs ultimately engage operators in more comprehensive planning, lead to a greater suite of implemented conservation practices at reduced costs, provide enhanced marketing opportunities, provide agencies and organizations better systems to work together, and offer a structured means for producers to demonstrate their environmental stewardship.

These are state level programs, and critics argue that they offer little or no regulatory "protection" from the Environmental Protection Agency or other federal regulators. Proponents, however, cite that in the case of the U.S. Fish and Wildlife Service and cooperative conservation agreements, a federal agency signed a binding regulatory certainty agreement with landowners. Additionally, EPA signed on as a supporter of the Minnesota regulatory certainty program, and they remain vocally supportive of the concept in general. In the worst case scenario, State regulatory certainty programs offer producers the opportunity to demonstrate environmental stewardship over and above mere compliance levels in a structured, government sponsored program. This would certainly provide a benefit to producers in the face of unforeseen legal action on the part of federal regulators.

NASCA designed this template to assist State Conservation Agencies explore the possibility of creating regulatory certainty programs of their own. In states where these programs already exist, this template can also be used to evaluate the effectiveness of the program and review participation from all potential partners. It is not designed to produce cookie cutter programs all over the country. Indeed, each state must evaluate a number of factors in deciding whether to pursue this concept and if so, how the program should work. However, this template should be of use when weighing the many regulatory certainty options available.

NASCA would like to thank the Natural Resources Conservation Service (NRCS) for providing a portion of the resources necessary to develop this template through its Conservation Innovation Grants (CIG) program. This provides more evidence that our federal partners support the concept of regulatory certainty for our agricultural producers and cooperators.

For more information about regulatory certainty and links to other state programs, please visit: http://www.nascanet.org/index.php/certainty-program-template/

IX. Appendices

Appendix A

Regulatory Certainty: *What's in it for me?*

Group	Benefits
Agricultural Operators	Cleaner water, soil loss prevention, lower costs for fertilizer, herbicide, and insecticide application, improved marketing potential, improved community relations, structured methodology to demonstrate environmental sustainability, predictable regulatory environment, improved operational planning
Regulators	Cleaner water, improved relationships with land managers and partner agencies, opportunities to have input into programs that will ultimately exceed minimum compliance requirements, no regulatory changes on operations that do not participate, accelerated environmental education presented to the agricultural community, regulatory cost reduction
State Conservation Agencies	Cleaner water, reduced soil loss, improved relations with agricultural operators, opportunity for increased conservation district presence with agricultural operators, ability to work with, promote, and celebrate stellar agricultural operations
NGOs	Cleaner water, increased access and exposure to program partners, increased opportunity to target resources
Commodity Organizations	Cleaner water, predictable regulatory environment for growers, marketing opportunities
Academia	Cleaner water, opportunities to field-test BMPs in real world applications, educational opportunities
Conservation Districts	Cleaner water, increased opportunities to work with cooperators, additional resources for soil and water conservation, opportunities to work with new partners, sustainability of natural resources
NRCS	Cleaner water, opportunities to leverage resources, ability to improve coordination with regulators, expanded conservation opportunities
Public	Cleaner water, enhanced opportunity to favor commodities grown under environmentally friendly conditions, greater leveraging of tax dollars

Appendix B
Regulatory Certainty Activities in Various States

State	Activity
Delaware	The Delaware Department of Agriculture has drafted legislation to create a regulatory certainty program, but the Delaware Division of Water has not agreed to support the concept. Thus, it is doubtful that draft bill will move forward any time soon.
Kentucky	The Kentucky General Assembly passed the Kentucky Agriculture Water Quality Act in 1994 (KRS. 224.71-100 through 224.71-140). The goal of the act is to protect surface and groundwater resources from pollution as a result of agriculture and silviculture (forestry) activities. The Agriculture Water Quality Act requires all landowners with 10 or more acres that are being used for agriculture or silviculture operations to develop and implement a water quality plan based upon guidance from the Kentucky Agriculture Water Quality Plan. It is the sole responsibility of each landowner to develop, implement and revise when needed, a water quality plan for their individual operations. Although this a regulatory program, in practice landowners with an approved plan in place are not fined for water quality offenses. Kentucky has also developed a self-assessment tool for landowners' use.
Louisiana	The State of Louisiana passed legislation in 2003 to create the Louisiana Master Farmer Program. By 2006 the regulations for the program had been promulgated and the program was implemented. In order for farmers in Louisiana to attain Master Farmer certification, they must first successfully complete the LSU Master Farmer curriculum. Additionally, they must implement a resource management system plan for their farm and any other farm they operate. This is a multi-disciplinary plan that covers all elements of responsible agricultural land stewardship. The plan is reviewed and updated at least once every five years by NRCS or the State of Louisiana to provide updates. Finally, they must agree to attend a minimum of 6 hours per year of continuing education approved by the LSU Agcenter. Certification does not expire as long as the operator remains in compliance with the program. One of the benefits of becoming a Master Farmer in Louisiana is certainty. The regulations of the Master Farmer Program state that any individual who has received a Master Farmer certification shall be presumed to be in compliance with state soil and water quality requirements as long as certification is maintained.
Maine	The Maine Agriculture Protection Act Assures that farmers in Maine who are in compliance with applicable state and federal laws, and who have implemented BMPs as noted in an approved conservation plan, cannot be considered a public or private nuisance, nor can it be considered in violation of municipal ordinance.

Maryland	Senate Bill 1029 was passed earlier this year and creates a voluntary program to certify agricultural operations willing to meet tough water quality requirements for nitrogen, phosphorus and sediment in line with the Chesapeake Clean Water Blueprint. Certification will provide the farmer flexibility as to when he or she has to meet potential new regulatory requirements or nutrient and sediment load reallocations for a period of 10 years.
Massachusetts	An MOU was signed between the Cape Cod Cranberry Growers' Association, the Massachusetts Commission for Conservation of Soil, Water, And Related Resources, and the Massachusetts Department of Environmental Protection in 2004 that effectively serves as a type of certainty program for cranberry growers in the state. If growers employ structural or operational BMPs into their cranberry operations, they can earn "conservation credits" which will allow them to increase the effective size of their bogs without additional permitting.
Michigan	The State of Michigan began working on the Michigan Agriculture Environmental Assurance Program (MAEAP) in 1998. After years of program development by a coalition of farmers, commodity groups, state and federal agencies, and conservation and environmental groups, the program was signed into law in March of 2011. Like other certainty programs, MAEAP is a voluntary program that helps farms of all sizes and all commodities prevent or minimize agricultural pollution risks. Step one for participants is to attend a MAEAP-sanctioned training session. The next step is to have an on-farm risk assessment completed on their operation to identify any pollution risks. This risk assessment is performed by conservation district personnel who have been certified to complete these assessments. After the farmer has addressed all risks identified in the assessment, the Michigan Department of Agriculture will perform an inspection to verify that all pollution risks have been addressed through implementation of proper BMPs. The operation is not granted MAEAP verification until all of these risks have been satisfactorily addressed. To maintain verified status, farms are re-verified every three years. There are a couple of notable benefits to farmers whose operations are verified. First, those operations who are seeking MAEAP verification get a ranking bonus for EQIP and other cost-share programs. The second benefit provides an element of certainty. By regulation owners or operators of MAEAP-verified farms are not subject to civil fines for discharges into waterways if they act promptly to correct the condition upon discovering it, and report the situation to the Michigan Department of Environmental Quality within 24 hours of discovery. Additionally, by statute a farmer shall not be liable for groundwater contamination on a MAEAP-verified farm for activities on the farm unless he or she was grossly negligent or in violation of state or federal law or failed to comply with the MAEAP standards. To date over 10,000 Michigan farms have voluntarily begun the MAEAP verification process. Of these over 1000 MAEAP verifications have been completed.

Minnesota	The Minnesota State Legislature passed and Governor Mark Dayton has signed HF 976, an Omnibus Environment, Natural Resources and Agriculture Act, which, among other things, authorizes and funds the state's new agricultural water quality certification program (also sometimes referred to as an "agriculture certainty program"). The purpose of the water quality certification program is to increase the voluntary implementation of agricultural conservation practices that then should result in water quality improvements in streams and lakes receiving runoff from enrolled farmland. Agricultural producers who implement a significant degree of conservation practices to reduce nutrient run-off and erosion would receive assurance (or "certainty") from Minnesota that their farms will meet the state's water quality standards and goals throughout the duration of the certainty agreement. The goal of the new state and federal partnership is to enhance Minnesota's water quality by accelerating the voluntary adoption of on-farm conservation practices. The program is being administered by the Dept. of Agriculture. Operational measures are being developed, and four watersheds are being identified for pilot projects.
Mississippi	If irrigation water runoff is captured by a tailwater recovery system and re-used for irrigation, the owner is eligible for a Class 1, 10 year water use permit from the state. If the operator does not have sufficient conservation practices in place to obtain a Class 1 permit, he or she will receive a 3 year, Class 2 permit. When a 3 year Class 2 permit expires the land must haves sufficient conservation practices to obtain a Class 1 standing or an approved accumulating flow metering device must be installed on the well and an annual report of water use must be submitted by December 31 of each year.
New Mexico	The U.S. Fish and Wildlife Service is entering into Candidate Conservation Agreements with landowners in New Mexico. These agreements state that if landowners will agree to implement a suite of BMPs for improving lesser prairie chicken habitat, the USFWS will not change management requirements for 30 years should the bird become listed under the ESA.
New York	New York's Agricultural Environmental Management (AEM) Program provides increased technical and financial assistance resources to operators who participate in a voluntary, five-tier process of assessment, planning, and implementation of conservation plans. Participants also enjoy marketing benefits associated with the program, and State code protects confidentiality of AEM plans.
Oregon	Oregon's Agricultural Water Quality Management Act, passed in 1993, directed the Oregon Department of Agriculture (ODA) to develop plans to prevent and control water pollution from agricultural operations. ODA developed 38 regional plans with the help of a number of local stakeholders. The law also requires farmers to comply with these area plans, although they can make their own choices on how to comply. Conservation districts will assist landowners by developing conservation plans for each

Oregon (Cont.)	operation. If an owner is in compliance with a current conservation plan for the property, and ODA responds to a complaint that the operation is polluting, the operator will not be fined initially and will be given the opportunity to correct the water quality problems arising from the agricultural operation on the property. Even though this is not a purely voluntary program, those who comply have the assurance that ODA will not penalize them without first having the opportunity to correct the problem.
Texas	Senate Bill 503 was passed into law in 1993. This bill named the Texas Conservation Board as the lead agency in the state for all activity relating to abating agricultural and silvicultural nonpoint source pollution. With this statute in place, the Texas Conservation Board developed a voluntary program for farmers to integrate BMPs to improve the environmental stewardship of their operations. Participants in the program must operate within the guidelines of a water quality management plan which is drafted specifically for their operation by the Board, the local conservation district, or sometimes by NRCS personnel. These operations are subject to periodic status review to ensure that participants are adhering to the plan. One of the major benefits of participation is that those entities with water quality plans get priority to state cost-share funding. They also enjoy a degree of relief from complaints by neighbors. Participation in the program is strictly voluntary with the exception of poultry growers, who are mandated by code to operate under one of these water quality plans. To date over 14,000 water quality plans have been implemented as a result of the program.
Utah	Utah law (Title 4 Section 18, Utah Code) requires the Conservation Commission to develop the Agriculture Certification of Environmental Stewardship (ACES) - applicable to each agricultural sector. It helps farmers and ranchers, of all sizes, evaluate their entire operation to make management decisions to sustain agricultural viability, protect natural resources, support environmentally responsible agricultural production practices, and build positive public opinion. To become eligible, farmers must complete three comprehensive steps: 1) document completion of education modules, 2) complete a detailed application to evaluate on-farm risk, and 3) participate in an on-farm inspection to verify program requirements applicable to state and federal environmental regulations. To retain the ACES, a participant must repeat all three steps including inspection every 5 years. Four sectors of agriculture have been identified. The Farmstead, Animal Feeding Operations, Grazing and Pasture Management, and Cropping Systems. Utah hasn't yet developed the "carrot" for the program.
Vermont	A $75,000 CIG was awarded to the Vermont Department of Agriculture, Food and Markets for the development of an Agricultural Water Quality Certainty Program. This program will create a framework that recognizes and rewards farmers who voluntarily implement conservation practices to minimize nutrient and sediment losses from their farm, above and beyond that which is required by law in Vermont.

Virginia	Virginia has passed legislation and regulations for their new Resource Management Plan law. Participation is voluntary and under the law, farms in Virginia with an approved resource management plan in place will be exempt from any new environmental regulations related to the Chesapeake Bay or TMDLs. Approved plans are valid for nine years. This law, however, does not exempt farms from existing regulations.
Wisconsin	Wisconsin has included a provision in its nutrient management rule to provide certainty for producers who develop a compliant plan. Under ATCP 50.04(3)(i), Wis. Admin. Code: A landowner is rebuttably presumed to comply with this section if the landowner complies with a nutrient management plan that is prepared or approved by a nutrient management planner, other than the farmer, who is qualified under s. ATCP 50.48." See http://docs.legis.wisconsin.gov/code/admin_code/atcp/50.pdf .
Wyoming	The U.S. Fish and Wildlife Service is entering into Candidate Conservation Agreements with landowners in Wyoming. These agreements state that if landowners will agree to implement a suite of BMPs for improving sage grouse habitat, the USFWS will not change management requirements for 30 years should the bird become listed under the ESA. This has been done before in Wyoming for the black-footed ferret. However, this is sage grouse initiative is the first time these agreements have been implemented on a state-wide basis.

*For more information on these activities please contact State Agency Representatives. Contact information is available at http://www.nascanet.org/index.php/resource-library/find-your-state-rep/ .

Appendix C

Michigan Agriculture Environmental Assurance Program (MAEAP) 2013 Partner Commitment

Mission Statement

MAEAP partners commit to actions that positively promote the efforts of Michigan farms of all sizes and all commodities to voluntarily prevent or minimize agricultural pollution risks, to achieve MAEAP verification and to comply with state and federal environmental regulations.

Partner Commitment

_____ is a partner of the MAEAP program and is committed to supporting the mission of the program. We commit to actions that will help to grow MAEAP, support the efforts of the partnership and authorize the use of our logo as a MAEAP partner.

Partnership Commitment

The collective commitments of MAEAP partners form the MAEAP partnership. Partners continue to collaborate through committees and in cooperation with the Environmental Assurance Advisory Council to create promotion, information, communication resources and incentives using Partner contributions and resources. MAEAP partners individually contribute resources that further the MAEAP mission and goals, as they are able. (Please complete side two of this document.)

Signature: _____

Representing: _____

Date: _____

Signature: (Jamie Clover Adams)

Representing: Michigan Department of Agriculture & Rural Development

Date: _____

Please return your signed agreement to the following address. After the Director's signature is added, the agreement will be returned to you.
Send to: Heather Casteel 525 West Allegan Street, PO Box 30017, Lansing, MI 48909
Or electronically to CasteelH@michigan.gov.

As a MAEAP Partner, my organization/group continues our support of MAEAP. We will promote the program to area farmers as appropriate by participating in the following throughout 2013.

(Please place a check mark next to the items in which your organization/group will participate):

We will support local MAEAP technicians and Conservation Districts by:

- ☐ Providing names of farmers interested in MAEAP verification.
- ☐ Inviting the technician to organization/group educational meetings.
- ☐ Inviting the technician to the annual meetings.

We will encourage MAEAP verification by:

- ☐ Hosting a meeting to educate farmers about MAEAP (with local partners).
- ☐ Incorporating MAEAP information into our publications.
- ☐ Having our leadership who farms request that a risk assessment be completed on their farm this year.

We will congratulate MAEAP verified farmers by:

Recognizing verified farmers at public events and in publications.
Communicating with local levels of government to recognize MAEAP verified farms.
Sending a letter of congratulations to newly verified farmers.

Other Commitments (please explain):

_____
_____
_____

_____ _____
Partner Signature Date

_____
Representing

Appendix D
State Regulatory Certainty Program Statutes

MICHIGAN NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.3109d MAEAP-verified farms; applicable conditions; obligation to obtain permit not modified or limited; definitions.

Sec. 3109d. (1) Beginning 6 months after the effective date of the amendatory act that added this section, notwithstanding any other provision of this part, the following apply to MAEAP-verified farms:

(a) Except as provided in subdivision (b), if all of the following conditions are met, the owner or operator of the MAEAP-verified farm is not subject to civil fines under section 3115, but may be responsible for actual natural resources damages:

(i) A discharge to the waters of the state occurs from a portion or operation of the farm that is MAEAP-verified and in compliance with MAEAP standards.

(ii) The owner or operator acted promptly to correct the condition after discovery.

(iii) The owner or operator reported the discharge to the department within 24 hours of the discovery.

(b) Subdivision (a) does not apply if either of the following conditions occurs:

(i) The actions of the owner or operator pose or posed a substantial endangerment to the public health, safety, or welfare.

(ii) The director, upon advice from the interagency technical review panel provided for in section 8710, determines the owner or operator has previously committed significant violations that constitute a pattern of repeated violations of environmental laws, rules, regulations, permit conditions, settlement agreements, or orders of consent or judicial orders and that were due to separate and distinct events.

(c) If a MAEAP-verified farm is in compliance with all MAEAP standards applicable to the farming operation, the farm is considered to be implementing conservation and management practices needed to meet total maximum daily load implementation for impaired waters pursuant to 33 USC 1313.

(d) If a discharge from a MAEAP-verified farm that is in compliance with all MAEAP standards

applicable to land application is caused by an act of God weather event, both of the following apply:

(i) The discharge shall be considered nonpoint source pollution.

(ii) If the discharge is determined by the director with scientific evidence provided by water quality data to have caused an exceedance of water quality standards, the farm, within 30 days

of notification, shall provide to the department a report that includes details of conservation or management practice changes, if necessary, to further address the risk of discharge recurrence. The report shall state whether those conservation or management practices have already been implemented by the farm. Upon receipt of the report, the department shall review the report and respond within 30 days. The departmental response may include report acceptance with no further action required or may recommend environmentally sound and economically feasible conservation or management practices to prevent future discharges.

(2) This section does not modify or limit any obligation to obtain a permit under this part.

(3) As used in this section:

(a) "Act of God weather event" means a precipitation event that meets both of the following conditions:

(i) Exceeds 1/2 inch in precipitation.

(ii) Was forecast by the national weather service 24 hours earlier as having less than a 70% probability of exceeding 1/2 inch of precipitation.

(b) "MAEAP-verified farm" means that term as it is defined in part 87.

History: Add. 2011, Act 1, Imd. Eff. Mar. 9, 2011.

Popular name: Act 451

Popular name: NREPA

§304. Louisiana Master Farmer Certification

A. The commissioner of agriculture and forestry may certify individuals as master farmers in accordance with this Section. Each individual must successfully complete a master farmer certification program and have implemented an individual comprehensive soil and water conservation plan that meets the standards and specifications of the United States Department of Agriculture, Natural Resources and Conservation Service, the Louisiana Department of Agriculture and Forestry, and the affected soil and water conservation district.

B. The commissioner may adopt rules and regulations setting out the requirements for obtaining a certification. The curriculum shall be established by the Louisiana State University AgCenter. The Louisiana State University AgCenter may consult with other agencies and organizations as needed, including but not limited to the Louisiana Department of Environmental Quality, Louisiana Department of Natural Resources, Louisiana Farm Bureau, the United States Department of Agriculture, Natural Resources and Conservation Service, and the state soil and water conservation commission. The curriculum shall include but is not limited to the instruction on environmental issues in agriculture, nonpoint source pollution, best management and conservation practices, soil and water quality monitoring demonstrations, and development and implementation of an individual comprehensive soil and water conservation plan.

C. Any individual who has received a master farmer certification shall be presumed to be in compliance with state soil and water quality requirements as long as certification is maintained. The master farmer certification shall continue as long as the individual actively maintains his specific comprehensive conservation plan in accordance with best management practices.

Acts 2003, No. 145, §1; Acts 2008, No. 920, §1, eff. July 14, 2008.

4-18-107. Utah Environmental Stewardship Certification Program.

(1) There is created the Utah Environmental Stewardship Certification Program.

(2) The commission, with the assistance of the department and with the advice of the Water Quality Board, created in Section 19-1-106, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act that establish:

(a) (i) best management practices;

(ii) state technical standards; and

(iii) guidelines for nutrient management plans;

(b) requirements for qualification under the Utah Environmental Stewardship Certification Program that:

(i) are consistent with sustainable agriculture;

(ii) help prevent harm to the environment, including prevention of an agricultural discharge; and

(iii) encourage agricultural operations in the state to follow:

(A) best management practices; and

(B) nutrient management plans that meet the state technical standards appropriate for each type of agricultural operation;

(c) the procedure for qualification under the Utah Environmental Stewardship Certification Program;

(d) the requirements and certification process for an individual to become a certified conservation planner; and

(e) standards and procedures for administering the Utah Environmental Stewardship Certification Program, including:

(i) renewal of a certification under Subsection (4)(b);

(ii) investigation and revocation of a certification under Subsection (6); and

(iii) revocation of a certification under Subsection (7)(b).

(3) An owner or operator of an agricultural operation may apply to certify the agricultural operation under the Utah Environmental Stewardship Certification Program in accordance with this section.

(4) (a) Except as provided in Subsection (6) or (7), a certified agricultural operation remains certified for a period of five years after the day on which the agricultural operation becomes certified.

(b) A certified agricultural operation may, in accordance with commission rule, renew the certification for an additional five years to keep the certification for a total period of 10 years after the day on which the agricultural operation becomes certified.

(5) Subject to review by the commissioner or the commissioner's designee, a certified conservation planner shall certify each qualifying agricultural operation that applies to the Utah Environmental Stewardship Certification Program.

(6) (a) Upon request of the Department of Environmental Quality or upon receipt by the department of a citizen environmental complaint, the department shall, with the assistance of certified conservation planners as necessary, investigate a certified agricultural operation to determine whether the agricultural operation has committed a significant violation of the requirements of the Utah Environmental Stewardship Certification Program.

(b) If, after completing an investigation described in Subsection (6)(a), the department determines that a certified agricultural operation has committed a significant violation of the requirements for the Utah Environmental Stewardship Certification Program, the department shall report the violation to the commission.

(c) Upon receipt of a report described in Subsection (6)(b), the commission shall review the report and:

(i) revoke the agricultural operation's certification; or

(ii) set terms and conditions for the agricultural operation to maintain its certification.

(7) (a) If, for a certification renewal under Subsection (4)(b), or an investigation under Subsection (6)(a), the department requests access to a certified agricultural operation, the certified agricultural operation shall, at a reasonable time, allow access for the department to:

(i) inspect the agricultural operation; or

(ii) review the records of the agricultural operation.

(b) If a certified agricultural operation denies the department access as described in Subsection (7)(a), the commission may revoke the agricultural operation's certification.

(8) If the commission changes a requirement of the Utah Environmental Stewardship Certification Program after an agricultural operation is certified in accordance with former requirements, during the certification and renewal periods described in Subsections (4)(a) and (b) the agricultural operation may choose whether to abide by a new requirement, but the

agricultural operation is not subject to the new requirement until the agricultural operation reapplies for certification.

(9) Nothing in this section exempts an agricultural discharge made by a certified agricultural operation from the provisions of Subsection 19-5-105.5(3)(b).

Enacted by Chapter 227, 2013 General Session

Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Part 1: ADMINISTRATION
Chapter 6: MAINE AGRICULTURE PROTECTION ACT

§153. Farm; farm operation or agricultural composting operation not a nuisance

A farm, farm operation or agricultural composting operation may not be considered a public or private nuisance under Title 17, chapter 91 if the farm, farm operation or agricultural composting operation alleged to be a nuisance is in compliance with applicable state and federal laws, rules and regulations and: [2007, c. 649, §3 (NEW).]

1. Farm; farm operation; agricultural composting operation. The farm, farm operation or agricultural composting operation conforms to best management practices, as determined by the commissioner in accordance with Title 5, chapter 375;

[2007, c. 649, §3 (NEW) .]

2. Storage or use of farm nutrients; complaints. For complaints regarding the storage or use of farm nutrients as defined in section 4201, subsection 4, the farm, farm operation or agricultural composting operation has implemented a nutrient management plan developed in accordance with section 4204 and operation of the farm, farm operation or agricultural composting operation is consistent with the nutrient management plan; or

[2007, c. 649, §3 (NEW) .]

3. Change in land use; occupancy of land. The farm, farm operation or agricultural composting operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation as long as, before the change in land use or occupancy, the farm, farm operation or agricultural composting operation would not have been considered a nuisance. This subsection does not apply to a farm, farm operation or agricultural composting operation that materially changes the conditions or nature of the farm, farm operation or agricultural composting operation after a change in the land use or occupancy of land within one mile of the boundaries of the farm, farm operation or agricultural composting operation. Nothing in this subsection affects the applicability of any of the other provisions of this chapter.

[2007, c. 649, §3 (NEW) .]

SECTION HISTORY

2007, c. 649, §3 (NEW).

Resource Management Plans
Article 1.1 of Title 10.1 of the Code of Virginia

§ 10.1-104.7. Resource management plans; effect of implementation; exclusions.

A. Notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

B. The presumption of full compliance provided in subsection A shall not prevent or preclude enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

C. Landowners or operators who implement and maintain a resource management plan in accordance with this article shall be eligible for matching grants for agricultural best management practices provided through the Virginia Agricultural Best Management Practices Cost-Share Program administered by the Department in accordance with program eligibility rules and requirements. Such landowners and operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and 58.1-439.5.

D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2.

E. Any personal or proprietary information collected pursuant to this article shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information. This subsection shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all other instances of federal or state regulatory actions.

(2011, c. 781.)

§ 10.1-104.8. Resource management plans; criteria.

A. The Soil and Water Conservation Board shall by regulation, and in consultation with the Department of Agriculture and Consumer Services and the Department of Environmental Quality, specify the criteria to be included in a resource management plan.

B. The regulations shall:

1. Be technically achievable and take into consideration the economic impact to the agricultural landowner or operator;

2. Include (i) determinations of persons qualified to develop resource management plans and to perform on-farm best management practice assessments; (ii) plan approval or review procedures if determined necessary; (iii) allowable implementation timelines and schedules; (iv) determinations of the effective life of the resource management plans taking into consideration a change in or a transfer of the ownership or operation of the agricultural land, a material change in the agricultural operations, issuance of a new or modified total maximum daily load (TMDL) implementation plan for the Chesapeake Bay or other local total maximum daily load water quality requirements, and a determination pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2 that an agricultural activity on the land is creating or will create pollution; (v) factors that necessitate renewal or new plan development; and (vi) a means to determine full implementation and compliance with the plans including reporting and verification;

3. Provide for a process by which an on- farm assessment of all reportable best management practices currently in place, whether as part of a cost-share program or through voluntary implementation, shall be conducted to determine their adequacy in achieving needed on-farm nutrient, sediment, and bacteria reductions;

4. Include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth; and

5. Specify that the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4, including best management practices identified in this subdivision and any other best management practices approved by the Board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan.

a. For all cropland or specialty crops such components shall include the following, as needed and based upon an individual on- farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications;

(3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service; and

(4) Cover crops meeting best management practice specifications as determined by the Natural Resources Conservation Service or the Virginia Agricultural Best Management Practices Cost-

Share Program.

b. For all hayland, such components shall include the following, as needed and based upon an individual on- farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications; and

(3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service.

c. For all pasture, such components shall include the following, as needed and based upon an individual on- farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A system that limits or prevents livestock access to perennial streams; and

(3) A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service.

(2011, c. 781.)

§ 10.1-104.9. Regulations under this article.

Regulations adopted by the Board for the enforcement of this article shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, 2.2-4007.05, and 2.2-4026 through 2.2-4030 of the Administrative Process Act (§ 2.2-4000 et seq.), and shall be published in the Virginia Register of Regulations. The Board shall convene a stakeholder group to assist in development of these regulations, with representation from agricultural and environmental interests as well as Soil and Water Conservation Districts. All other provisions of the Administrative Process Act shall not apply to the adoption of any regulation pursuant to this article. After the close of the 60-day comment period, the Board may adopt a final regulation, with or without changes. Such regulation shall become effective 15 days after publication in the Virginia Register of Regulations, unless the Board has withdrawn or suspended the regulation or a later date has been set by the Board. The Board shall also hold at least one public hearing on the proposed regulation during the 60-day comment period. The notice for such public hearing shall include the date, time, and place of the hearing.
(2011, c. 781.)

Additional State Regulatory Certainty Program Statutes

Virginia

http://www.dcr.virginia.gov/laws_and_regulations/documents/lr7-resource-management-plans-03-07-13.pdf

Maryland

http://mgaleg.maryland.gov/2013RS/chapters_noln/Ch_339_sb1029E.pdf

Wisconsin

https://docs.legis.wisconsin.gov/code/admin_code/atcp/020/50/I/02