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*Delivered by email to [greg.watson@state.ma.us](mailto:greg.watson@state.ma.us)*

Jessica Bunker  
Holderness, NH

**Re:** Comments on 330 CMR 31.00 – Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes

Jason Fleury  
Jordan, NY

Dear Commissioner Watson,

Ginny Grace  
Stratham, NH

Thank you for the opportunity to comment on the proposed regulations regarding plant nutrient application requirements (330 CMR 31.00).

Manuel Irujo  
Quincy, MA

NEBRA is part of the clean water profession and our members are some of the leading stewards of water quality in New England. We understand the challenges nutrients present; our wastewater treatment facilities work 24/7/365 to reduce nutrient pollution. We routinely experience the challenges of meeting the ever-more stringent limits that research has shown are necessary to protect water quality. We manage nutrients all the time.

Jay Kilbourn  
Portland, ME

Geoffrey Kuter  
Amesbury, MA

The proposed 330 CMR 31.00 regulations would have direct impacts on many of our NEBRA members, who are involved in producing, marketing, distributing, and using products derived from organic residuals, including biosolids. Our members are heavily involved in helping the Commonwealth and MassDEP advance its goals of diverting organics from landfills and incineration and helping move our communities toward sustainability. The proposed regulations would have a chilling effect on these efforts. For example, if we understand the regulations correctly, uses of the fertilizer produced by the Massachusetts Water Resources Authority would be dramatically restricted. Other products from the processing of organic residuals would be similarly affected.

Lise LeBlanc  
Mount Uniacke, NS

Deborah Mahoney  
Boston, MA

Donald Song  
Topsham, ME

Mark Young  
Lowell, MA

**Staff**

Ned Beecher

We applaud MassDAR efforts to control non-point sources of nutrient pollution. We are glad to work together to address this very challenging concern. And we believe the Commonwealth's farming community, landscapers, and others are willing to assist in this effort.

However, we request that the best current science be applied and that the interests of the variety of stakeholders be considered. The current proposed regulations do not seem to have included these critical ingredients. As drafted, they are confusing and go beyond the requirements of the legislation (Chapter 262

of the Acts of 2012). And, while they make reference to NRCS and other guidance, at least some of that guidance – such as the “Massachusetts NRCS Phosphorus Runoff Index” – is not clearly available.<sup>1</sup>

The current draft regulations are confusing, and they do not come with any background information or documentation that would help clarify their meaning and intent. For example, it is hard to differentiate the different sources of plant nutrients discussed in the draft regulation, which ones are subsets of which, and what requirements MADAR intends to impose on each. An explanatory diagram or table in supportive documentation would have been helpful.

We urge MADAR to abandon the current draft 330 CMR 31.00 and begin again. Given the proximity of the growing season, it makes no sense to impose any new regulations in 2014; confusion would be the only result.

Instead, we urge MADAR to convene a working group co-led by MADAR, Extension, and NRCS and including Farm Bureau and the variety of other stakeholders, including NEBRA. The group should focus on understanding the best available science on nutrient dynamics and runoff in agricultural, turfgrass, and other fertilizer applications. The state phosphorus site index should be updated with the latest research, including P source coefficients. Once a current version is finalized and published, it and other clearly-identified nutrient management technical documents can become key references in a new set of MADAR regulations, thereby ensuring a sound scientific basis for the regulations. (The regulations should provide for future flexibility by extending the references to future updates of the technical resources/guidance.) An approach of this sort is critical for ensuring the best possible balance of water quality protection and the viability of ongoing agricultural and turf management practices and the management of organic residuals.

Here are several more specific concerns regarding the current regulations:

- Some of the definitions included in the draft regulations are vague and/or inconsistent with definitions in other laws and regulations. For example, the definition of “biosolids” is not consistent with existing state (i.e. 310 CMR 32) and federal language. In addition, MADAR regulations should recognize the differences between types of biosolids; the management and potential impacts of “Type 1” biosolids are different from those of “Type 2,” for example.
- Applications of biosolids, biosolids-derived products, and other organic residuals (including natural organic fertilizers) are already regulated by two MassDEP regulations: solid waste beneficial use determinations and/or the sludge management rules (310 CMR 32). (Biosolids are also regulated at the federal level.) We hope that MADAR regulations will work together with MassDEP standards and avoid creating additional confusion. As noted above, the Commonwealth has a laudable goal of diverting organic residuals from landfills, and any additional set of regulations imposes significant roadblocks to that goal. Since MADAR and MassDEP lie within the same organizational umbrella, there is no reason not to have a coordinated regulatory structure. We urge the agencies to work together with Extension and NRCS to develop a more rational, clear nutrient management program. MADAR should recognize that these other organizations and regulatory agencies (including USDA, U. S. EPA, and MassDEP) have been regulating biosolids and organic residuals for decades and can provide valuable experience to the development of a rational, science-based nutrient management program. Other jurisdictions, such as Maine and Ontario, provide models for such programs.
- The regulation is unclear regarding how P will be measured. While such technical details are best left to the NRCS or Extension technical guidance (including the UMass plant tissue and soil testing laboratory), the regulation should at least make mention and show understanding of the significant differences between P testing methods.

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<sup>1</sup> We contacted Masud Hashimi at UMass Amherst Extension and asked about this. He said they had some input into this topic, but that it was a Massachusetts NRCS document; he referred us to Massachusetts NRCS. When we searched the Massachusetts NRCS website, the word “phosphorus” did not even show up.

- With regards to standards for applications of nutrients on turf grass and other non-agricultural lands, the proposed regulation is somewhat consistent with the guidance developed by the New England Interstate Water Pollution Control Commission. Regulatory consistency with those recommendations and the standards being adopted in neighboring states should be a goal.

In summary, we urge MADAR to commit adequate resources and time – and engage other key agencies to do the same – so as to create a rational, science-based nutrient management program that relies on site-specific management planning and balances the needs of landowners with the need to reduce non-point source nutrient pollution. Many of the necessary concepts and standards are included in the current draft, but more effort is needed to clarify the goals of the regulation, correct the definitions, and develop a streamlined, workable nutrient management program.

The goals of NEBRA are in line with what we believe to be the intent of the nutrient management regulations, to protect surface water from nutrient enrichment. NEBRA believes that with a science-based approach to these regulations, developed with the stakeholders mentioned above, the nutrient management regulations could complement – instead of hinder – Massachusetts’ goals of increasing responsible organic waste diversion.

If you have any questions, please contact Ned Beecher at the NEBRA office: 603-323-7654 / [ned.beecher@nebiosolids.org](mailto:ned.beecher@nebiosolids.org).

Sincerely,



Andrew Carpenter  
President

**The North East Biosolids and Residuals Association (NEBRA)** is a 501(c)(3) non-profit professional association advancing the recycling of biosolids and other organic residuals in New England and eastern Canada. NEBRA membership includes the environmental professionals and organizations that produce, treat, test, consult on, and manage most of the region’s biosolids and other large volume recyclable organic residuals. NEBRA is funded by membership fees, donations, and project grants. Its Board of Directors are from MA, ME, NH, NY, and Nova Scotia. NEBRA’s financial statements and other information are open for public inspection during normal business hours. For more information: <http://www.nebiosolids.org>.