

Factsheet

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replaces OMAFRA Factsheet #14-005 of the same name

Nutrient Management Act, 2002

Manure Agreements With Brokers and Neighbours

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INTRODUCTION

Farmers whose operations generate manure or other agricultural source materials but lack enough land base to spread these nutrients in a sustainable manner are faced with potentially difficult decisions.

Options for managing the surplus manure or other agriculture source material include:

- expanding the crop production land base by purchasing or renting/leasing additional land
- transferring material to a neighbour for land application or to an intermediate operation (e.g., mushroom compost facility)
- arranging for a broker to take the material

This Factsheet explores each of these options to help determine which best suits the circumstances and goals. Sample agreement forms are included. These forms are consistent with the current requirements of the *Nutrient Management Act, 2002* (NMA), and Ontario Regulation (O. Reg. 267/03).

EXPANDING CROP PRODUCTION LAND BASE

An operation can expand its land base for manure application by either buying more land, or renting or leasing additional property. Sometimes these options are not a good business fit: suitable land is not available in the immediate vicinity, cropping is not part of the current operation or moving into that business requires a significant investment.

TRANSFERRING MATERIAL THROUGH AGREEMENTS

If purchasing or leasing more land is not a preferred option, consider transferring the surplus material to a different location. This Factsheet discusses the types of agreements for transferring surplus materials:

- nutrient transfer agreement
- broker agreement

Transfer Through a Nutrient Transfer Agreement

Operations that generate agricultural source material can give or sell this material to another operation. This transaction is recorded through a “nutrient transfer agreement.”

A nutrient transfer agreement is required when the generating farm requires a nutrient management strategy (NMS) and the receiver is a farm that requires a nutrient management plan (NMP) or a non-agricultural source material plan (NASM plan). Even when an NMS, NMP or NASM Plan is not a requirement, it is still a good practice for farms that transfer or receive agricultural source material to have a formal agreement between them.

At a minimum, a transfer agreement must identify:

- the name of the generator
- the name of the person/company to whom the material is transferred
- the type and quantity of material to be transferred, as well as the time of the expected transfer

Both parties must sign the agreement, and the agreement must be included in the NMS of the generating operation. Make sure to include the operation identifiers assigned by OMAFRA to the generator and the receiver.

The agreement may also include other conditions that are specific to the parties involved, such as:

- the location(s) where materials will be applied
- which party will look after transporting or land-applying the materials

If there is a spill, what are the responsibilities of each party? Pollution liability insurance is a good idea for both parties.

Landowners, in agreeing to allow nutrients to be stored or applied to their land, can be held liable for damages resulting from misuse or accidental release of these nutrients to the environment.

See page 3 for a sample nutrient transfer agreement.

Transfer Through a Broker Agreement

Another option for managing surplus agricultural source material is to give or sell the material to a broker — a person or business that becomes responsible for finding a suitable use or destination for the material.

A broker receives agricultural source materials from an operation, does not generate a new nutrient product from those materials and does any of the following:

- transfers the prescribed materials to another operation
- applies them to land on behalf of another
- stores them for either purpose

As a standard business practice, a broker may complete a “broker agreement form” with:

- each person from whom they receive agricultural source material
- each person to whom they transfer agricultural source material

Brokers working with farms that have an NMS, NMP or NASM plan must have a signed broker agreement:

- with the generator of the material before they are allowed to receive agricultural source material from an operation required to have an NMS
- with the receiver of the material before they are allowed to deliver material to an operation that is required to have an NMP or a NASM plan

A broker agreement must:

- set out the type and quantity of the materials to be transferred
- state the proposed date of transfer

Each party to the agreement must have a signed copy.

See pages 4 and 5 for sample broker agreements.

Responsibility of Generators Using Brokers

Generators are responsible for knowing whether there is sufficient storage available between their operation and the broker’s operation to comply with the Regulation.

Generators are also responsible for confirming that any broker they are dealing with has a valid broker certificate.

PREPARING AGREEMENTS

Completeness

The agreements discussed here are legal documents and must be completed correctly. For example:

- if a leased property is in the name of more than one person, all owners must sign the agreement
- if the document requires a witness, witnesses cannot be a family member or business partner — they must be an “arms-length” third party

Have a lawyer review these documents to ensure everyone’s interests are protected. Improperly executed agreements and contracts could expose the parties to unnecessary liability.

Length of Agreements

All the agreements discussed are required to be in force for a minimum of 1 year, and there is no maximum term. Consider negotiating a longer-term agreement (5 years is a typical example).

If any of the agreements are terminated before the NMS and/or NMP expires, the strategy and/or plan must be updated as part of the annual NMS and NMP annual review and update that is required by February 15 of each year.

Public Access

Please note that the general public may obtain copies of agreements made to comply with the *Nutrient Management Act* and its Regulation through the *Freedom of Information and Access to Privacy Act*.

SAMPLE NUTRIENT TRANSFER AGREEMENT

GENERATOR

Name: John Farmer

Operation Identifier
(if previously assigned by Ministry): _____

and

RECEIVER

Name: Joe Commonman

Operation Identifier:
(if previously assigned by Ministry): _____

Location of where agricultural source materials are to be applied to land: Lot 12, Conc. 3 My Township, My County

Area of land available for spreading : 20 hectares

This agreement, between the parties named above, is for the transfer of the agricultural source material identified as:

- farm animal manure
- washwaters from agricultural operations
- runoff from livestock yards or manure storage facilities
- organic materials produced by intermediate generators (i.e., compost)

Proposed date(s) of transfer Each May and November

Quantity transferred: 700 cubic metres

The Parties to this agreement agree as follows:

- Both Parties will meet the requirements of the *Nutrient Management Act, 2002*, Ontario Regulation 267/03.
- The Generator and the Receiver warrant that between them there is adequate storage for these agricultural source materials and that the storage meets the requirements for construction and siting in Part VIII of the Regulation, if required by the *Nutrient Management Act, 2002*, Ontario Regulation 267/03.
- The terms of this agreement shall strictly apply to the present Receiver. Should the Receiver use the nutrient in a manner that is demonstrated to cause environmental harm, the agreement ceases to apply.

This agreement shall be in force for a minimum period of one (1) year commencing

January 1, 2021 and ending December 31, 2026

<u>John Farmer</u>	_____	<u>Jan. 1, 2021</u>
Generator Name (print)	Signature	Date
<u>Joe Commonman</u>	_____	<u>Jan. 1, 2021</u>
Receiver Name (print)	Signature	Date
<u>I.C. Clearly</u>	_____	<u>Jan. 1, 2021</u>
Witness Name (print)	Signature	Date

SAMPLE BROKER AGREEMENT WITH GENERATOR

BROKER

Name and Certification Number: Manure Brokers Inc 99999999

and

GENERATOR

Name: Joe Farmer

Operation Identifier:
(if previously assigned by Ministry): _____

This agreement, between the parties named above, is for the transfer of the agricultural source materials identified as:

- farm animal manure
- washwaters from agricultural operations
- runoff from livestock yards or manure storage facilities
- organic materials produced by intermediate generators (i.e., compost)

Description of operation
where materials were generated: Mixed livestock operation, dairy and swine

Proposed date(s) of transfer Each May and September

Quantity transferred: 700 cubic metres

Days of Storage available by broker: _____

The Parties to this agreement agree as follows:

This agreement shall be in force for a minimum period of one (1) year commencing
January 1, 2021 and ending December 31, 2026

The terms of this agreement shall strictly apply to the present Broker. Should the Broker use the nutrient in a manner that is demonstrated to cause environmental harm, the agreement ceases to apply.

Generator Name (print) Signature Date

Broker Name (print) Signature Date

Witness Name (print) Signature Date

SAMPLE BROKER AGREEMENT WITH RECEIVER

BROKER

Name and Certification Number: Manure Brokers Inc 99999999

RECEIVER

Location where agricultural source materials are to be applied to land: Lot 12, Conc. 3 My Township, My County

Area of land available for spreading: 20 hectares

Name: Joe Commonman

Operation Identifier:

(if previously assigned by Ministry): _____

This agreement, between the parties named above, is for the transfer of the agricultural source material identified as:

- farm animal manure
- washwaters from agricultural operations
- runoff from livestock yards or manure storage facilities
- organic materials produced by intermediate generators (i.e., compost)

Description of operation where materials were generated: Mixed livestock operation, dairy and swine

Proposed date(s) of transfer: Each May and September

Quantity transferred: 700 cubic metres

The Parties to this agreement agree as follows:

This agreement shall be in force for a minimum period of one (1) year commencing January 1, 2021 and ending December 31, 2026

The terms of this agreement shall strictly apply to the present Broker. Should the Broker use the nutrient in a manner that is demonstrated to cause environmental harm, the agreement ceases to apply.

Receiver Name (print) Signature Date

Broker Name (print) Signature Date

Witness Name (print) Signature Date

This Factsheet was written by Dale McComb, Environmental Specialist, OMAFRA, Guelph, and Daniel Ward, P.Eng., Poultry and Other Livestock Housing and Equipment, OMAFRA, Stratford, and reviewed by Peter Doris, Environmental Specialist, OMAFRA, Brighton.

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