



**AGRICULTURAL STEWARDSHIP ACT  
GUIDELINES**

**Working in Cooperation with Virginia's Soil and Water  
Conservation Districts**

**Revision effective November 10, 2022**

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# **VIRGINIA AGRICULTURAL STEWARDSHIP ACT GUIDELINES**

## **INTRODUCTION**

The 1996 Session of the General Assembly enacted the Agricultural Stewardship Act (ASA) (Va. Code § 3.2-400 et seq.) (Act), which requires the Commissioner of Agriculture and Consumer Services (Commissioner) to administer and enforce the ASA program. Through an effort of cooperation and coordination involving Virginia's Soil and Water Conservation Districts (SWCD) or (District), the Virginia Department of Agriculture and Consumer Services (VDACS), and the agricultural community, the ASA program provides a common-sense solution to water pollution problems caused by agricultural operations. The ASA offers a positive approach to addressing pollution involving agricultural operations and provides a process by which individual agricultural producers can be alerted to areas of their operations that may be causing water pollution.

Section 3.2-408 of the ASA requires that the Commissioner develop, in consultation with the local SWCD, the Department of Conservation and Recreation (DCR), and interested persons, guidelines to assist in the implementation of the ASA program. These guidelines shall address, among other things, the conduct of investigation, sources of assistance for owners and operators, and intergovernmental cooperation. As used throughout these guidelines, "Commissioner" includes ASA staff.

These guidelines were originally developed in 1996 and revised in 2010 and 2021 to reflect changes to the program.

## **AGRICULTURAL STEWARDSHIP ACT (ASA) OVERVIEW**

The ASA requires that a complaint first be made to the Commissioner. Unless the complaint was made anonymously, the Commissioner must accept complaints alleging that a specific agricultural activity is causing or will cause water pollution. After the Commissioner receives a complaint that must be investigated, the Commissioner will ask the local SWCD whether it wishes to investigate the complaint. If the District does not wish to investigate the complaint, the Commissioner will conduct an investigation. The purpose of the investigation is to determine whether the agricultural activity that was the subject of the complaint is causing or will cause water pollution. If no water pollution is identified as a result of the agricultural activity, the Commissioner will dismiss the complaint.

If the agricultural activity is causing or will cause water pollution, the ASA provides the owner or operator an opportunity to correct the problem. The owner or operator will be asked to develop a plan containing "stewardship measures" (often referred to as "best management practices") to prevent water pollution. The owner or operator then develops the plan, and once the plan is developed, the local District may review it and make recommendations to the Commissioner. If the Commissioner approves the plan, the Commissioner will then ask the owner or operator to implement the plan within a specified period of time.

If the owner or operator fails to implement or maintain the plan's stewardship measures after a

plan is approved, the Commissioner will take enforcement action under the ASA against the owner or operator.

In some cases, the ASA investigation will not produce sufficient evidence to support the conclusion that the agricultural activity in question is causing or will cause pollution. In those cases, the investigator will offer suggestions on how the owner or operator might improve the farming practices to prevent complaints in the future. The purpose of the ASA is to solve problems by working one-on-one with farmers.

## WHAT THE ACT COVERS

### 1. *Activities Covered by the ASA*

The ASA applies to agricultural activities that are creating or, if not changed, will create any alteration of the physical, chemical, or biological properties of any state waters resulting from sedimentation, nutrients, or toxins. The only exception is when the agricultural activity in question is (i) a silvicultural activity affecting water quality pursuant to Article 12 of Chapter 11 of Title 10.1 of the Code of Virginia or (ii) already permitted by the State Water Control Board (through the Department of Environmental Quality). The permits are usually a Virginia Pollution Abatement (VPA) permit (general or individual) for the storage and land application of animal waste, a Virginia Pollution Discharge Elimination System permit for certain aquaculture facilities or for mixed production and processing operations, or a permit issued by the Commonwealth of Virginia for the land application of biosolids.

The ASA does not apply to forestry activities, odor concerns, or landfills. In terms of waste problems, the ASA would only apply to farm dumps where agricultural products or animal carcasses are disposed of and that have clear water quality impacts. Finally, the ASA does not apply to air pollution or to water pollution caused by non-agricultural activities.

### 2. *Definitions of Sedimentation, Nutrients, and Toxins*

**Sedimentation** is soil material that has been transported from its original site by air, water, or ice and has been deposited in another location. The primary focus under the ASA will be on erosion of soil and its deposition in surface water.

**Nutrients** are dry or liquid materials that provide elements, such as nitrogen, phosphorus, and potassium that can nourish plants. Commercial fertilizers and animal manure are the two primary sources used to supply nutrients to plants in agricultural operations and are the focal point of the ASA.

For the purposes of these guidelines, a **toxin** is any substance or mixture of substances intended to be used to prevent, destroy, repel, or mitigate agricultural pests or to be used as a plant regulator, defoliant, or desiccant, commonly called pesticides. Pesticide complaints are forwarded to the VDACS Office of Pesticide Services for investigation.

3. *What the Act Means by "Pollution"*

The ASA defines pollution as “any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins” (Va. Code § 3.2-400). When sediments, nutrients, or toxins enter the water from an agricultural activity, they constitute pollution under the ASA.

However, even if pollution is occurring, the ASA gives the Commissioner the power to dismiss a case if the Commissioner determines that:

*“ . . . the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses . . . ”* (Va. Code § 3.2-402(C).)

There are two key questions for determining whether pollution is occurring or will occur.

1. Are there any barriers to prevent the sediment, nutrients, or toxins from reaching the water?
2. Is the owner or operator using any practices designed to prevent the pollutant from reaching the water?

## **SECTION B - HOW INVESTIGATIONS ARE CONDUCTED**

1. *Receipt of Complaints*

Complaints are accepted by either verbal or written statement. However, when a complaint is made anonymously, the Commissioner has discretion whether to investigate the complaint. In addition, if complaints are unclear and not site specific, the Commissioner may decide not to investigate them.

Complaints are often forwarded from other governmental agencies. If a person provides such agency with his contact information, the person will be listed as the complainant. Otherwise, the complaint will be considered “anonymous” unless that agency chooses to be listed as the complainant.

If the Commissioner is made aware of an emergency situation, special procedures may be used, to the extent authorized by law, in order to protect the environment and the public.

2. *Decision to Investigate*

The ASA program is "complaint-driven." The Commissioner will not investigate a farm activity pursuant to the ASA program unless the Commissioner first receives a complaint. If the person making the complaint gives his name, the ASA requires that the Commissioner or the local District investigate the validity of the complaint. If the local District agrees to perform the District investigation, the Commissioner will ask the District to complete the investigation and provide evidence from its investigation within 21 days of the date the complaint was received by the Commissioner.

### 3. *District ASA Policy and Handling of Complaints.*

Each year as a condition of its grant agreement with DCR, each District must notify the Commissioner as to how it will handle ASA complaints and provide a District contact who has been delegated by the local District Board the authority necessary to make decisions regarding complaints. Such notification is evidenced by the ***Soil and Water Conservation District Policy for Handling Agricultural Stewardship Act (ASA) Complaints*** (Appendix E) required to be submitted to the Commissioner by each District. Districts should update this policy document each September or whenever there is a personnel change that affects the handling of complaints.

The Commissioner recommends that that the board of directors for each District delegate to a single individual, board member, or staff the decision whether to investigate, perform a joint investigation with VDACS staff, or not participate in the investigation. The delegation of this individual should take place annually or whenever there is a personnel change that would impact it and be documented and reflected in board meeting minutes of the District. Having this individual make the decisions regarding ASA investigations will negate the need for District discussions during the investigation stage of the complaint response process.

Upon receiving a complaint and unless the complaint is anonymous, the Commissioner must notify the District where the land lies and request that the district determine the validity of the information within 21 days. If a District declines to act, the Commissioner must determine the validity of the complaint. A District may choose to assist in a joint investigation with the Commissioner or accompany the Commissioner's staff to represent the District during the investigation. The Commissioner is responsible for leading these types of investigations. When the District chooses to conduct the investigation on its own, it may indicate in writing or orally its decision to the Commissioner. This is typically done via email response unless the District has indicated this as the preferred method on its most recent ***Soil and Water Conservation District Policy for Handling Agricultural Stewardship Act (ASA) Complaints*** form. If the District is conducting the investigation and there are any questions regarding right-of-entry, collection and handling of evidence, or preparing the investigation report, the District should consult with the Commissioner prior to proceeding with the investigation.

A District may choose not to perform any investigations if it had indicated such on its most recent ***Soil and Water Conservation District Policy for Handling Agricultural Stewardship Act (ASA) Complaints*** form. If a District informs the Commissioner that, as a matter of policy, it does not intend to perform ASA investigations, the Commissioner will consider the District to have declined to act and the Commissioner will determine the validity of any complaint in such District. Regardless of the District's preference for handling complaints, the Commissioner will continue to notify the directors of the District where the land lies of the receipt of each complaint.

The ASA requires that, for complaints investigated by a local District, the investigation must be completed within 21 days of the Commissioner's receipt of the complaint. The ASA does not specify a length of time in which the Commissioner or his staff must complete the investigation; however, it is the Commissioner's policy that, when possible, investigations by the Commissioner be completed within the same 21-day time period.

#### 4. *Notice to Owner or Operator of Investigation*

When the Commissioner or the District conducts the investigation, either the Commissioner or the District will notify the owner or operator that the Commissioner has received a complaint of the owner's or operator's agricultural activity that must be investigated. Such notification will include the nature of the complaint. To document the notice and the investigation arrangements, the investigator will follow-up with a letter or email to the owner or operator.

In those instances in which a District may not wish to give notice to the owner or operator about the complaint after it has agreed to investigate, the Commissioner will assist in delivering the initial notice of the investigation. The Commissioner will explain that the Commissioner has received a complaint, that an investigation is necessary, and that someone from the District will contact the owner or operator to arrange a time to conduct a site investigation.

Regardless of who makes the initial contact, the person who sends the written notice of the investigation to the owner or operator will also send appropriate written information regarding the ASA. This information provides the owner or operator an opportunity to learn more about the ASA, its procedures, and what the owner or operator can expect regarding resolution of the complaint.

#### 5. *Notice of Findings from Investigation*

The Commissioner will notify the owner or operator of his decision as to whether a plan is necessary. When a District performs an investigation, it will provide its findings and all materials produced by the District or collected during the investigation period to the Commissioner to make a decision. The Commissioner's notice to the owner or operator will either dismiss the complaint or inform the owner or operator that he must submit a plan to the Commissioner describing conservation measures that he will implement to correct the water pollution problem. The owner or operator must submit this plan to the Commissioner and the District no later than 60 days after the owner or operator receives a written notice informing him that a plan is necessary. Information regarding planning and implementation will be included with this notification to assist the owner or operator. The owner or operator may seek assistance in developing a plan. (See Section F of these Guidelines). The Commissioner may consider a corrective order if a plan is not submitted within 60 days. After submittal of the plan to the Commissioner and the District, and if the plan includes measures needed to prevent or cease water quality pollution, the Commissioner will approve the plan within 30 days after receipt. Upon approving the owner or operator's plan, the Commissioner will inform the owner or operator and the complainant. The District will be copied on this correspondence.

The owner or operator must begin implementing his plan within six months of receiving notice that the agricultural activity is creating or will create pollution and that a plan is necessary. The owner or operator must then complete implementation of his plan within a period specified by the Commissioner, not to exceed 18 months of receiving the notice. The owner or operator may be able to receive an extension in some cases, as described in Section 6 below.



## 6. *Extensions of Deadlines*

Sometimes an owner or operator may need more time to complete implementation of his plan because of circumstances beyond his control. The ASA provides that the Commissioner may grant an extension of up to 180 days (six months) if a hardship exists and if the owner or operator has made a request for an extension at least 60 days prior to the date he was supposed to have completed implementing his plan. The Commissioner will determine that a situation constitutes a hardship, including financial hardship, if it was caused by circumstances beyond the owner's or operator's control and if the owner or operator has been making a good faith effort to implement his plan. The Commissioner will, within 30 days of receiving such request, respond to the requestor of an extension and include the basis for choosing to approve or reject such a request.

## 7. *Notification of Landowner, if Different from Operator*

It is the Commissioner's discretion whether the landowner, if different from the operator, is notified of the decisions. The Commissioner may choose to notify the landowner as well as the operator when the Commissioner determines that the complaint involves an agricultural activity on land that the operator rents from someone else or when the operator manages the agricultural activity for the owner of the land. If the investigation shows that no water pollution problem exists or if the problem is easily corrected by the operator's change in field management, the Commissioner may determine that notification of the owner is unnecessary. If the problem involves an old feature (e.g., an old gully) that was created before the present operator began renting the land or if correcting the problem requires construction, the Commissioner may determine that the owner needs to be notified.

## 8. *Right of Entry*

The owner or operator of a farm that is subject of a complaint will be given notice of intended entry to investigate the complaint. In many cases, such notice will be provided by phone to the owner or operator, with written notice subsequently provided to confirm the investigator's oral statements. Whenever possible, the Commissioner or District will seek the owner's or operator's consent prior to entering the land that is the subject of a complaint. However, the ASA authorizes the Commissioner or District to enter such land after notice is provided to the owner or operator and allows the Commissioner to petition the circuit court where the land is located to require the owner or operator to allow the Commissioner entry. Additionally, the Commissioner may petition the circuit court to require the owner or operator to allow the Commissioner to enter the same land to check implementation of stewardship measures specified in a corrective order or to maintain such stewardship measures.

If a complaint alleges water pollution created by erosion coming from a specific field on the farm, then the Commissioner or District will not enter other fields. If the complaint is made more broadly to say that erosion is coming from the farm as a whole into a stream, then the investigation will cover all of the farm that drains into such stream. If the complaint is made even more broadly to say that erosion is coming from the farm as a whole without naming the water body, then the investigation will cover the whole farm.

With the owner's or operator's consent, the Commissioner or District may enter fields not covered

by the complaint to examine or do other things that are relative to the investigation.

If an owner or operator denies the Commissioner's representative entry onto the land or later withdraws his consent regarding entry, the representative will leave the property immediately and report this to the Commissioner as soon as possible.

#### 9. *Purpose and Scope of Investigation*

The purpose of the investigation is to determine if there is substantial evidence to prove that the agricultural activity in question is creating or will create water pollution from sedimentation, nutrients, or toxins, as alleged in the complaint. Activities that are creating or will create water pollution that were not the subject of the complaint should be pointed out to the owner or operator as areas that should be voluntarily addressed even though these areas are not covered by the ASA complaint.

#### 10. *Evidence*

The ASA requires that there be “substantial evidence” that the agricultural activity is creating or will create water pollution.

#### 11. *Sample Collection*

Due to the complexity and cost of water sampling and analysis, samples will be taken only when they are absolutely necessary to determine the validity of a complaint. When an investigator can see that pollutants are entering or will enter the water body in question, he will not need to take samples because the case can be proven through photographs, maps, eye-witness testimony, and other general evidence. The experience of other states that have programs similar to the ASA suggests that sampling is only necessary in a few cases. For scientific analysis of any water or other evidence, the District investigator should contact the Commissioner for specific instructions. The Commissioner may seek assistance from the Virginia Department of Environmental Quality, the Virginia Department of Health, or other state agencies regarding sampling and analysis.

### **SECTION C - CONFIDENTIALITY OF INFORMATION**

Pursuant to subdivision 4 of Va. Code § 3.2-103, the Commissioner is required to hold records of active investigations in confidence unless otherwise directed by the Governor or the Board of Agriculture and Consumer Services until the investigation is closed. A District should not discuss details of an active ASA investigation, including the location, landowner, operator, or complainant, until a case decision (determined to be *founded*, *unfounded*, or *dismissed*) has been made by the Commissioner. Discussing details of the complaint in an open or public meeting prior to the completion of the investigation could undermine the integrity of the investigation. Any discussions of the complaint in such meetings should be limited to the case number (case number assigned by VDACS and provided in the initial complaint notification) and the locality in which it was received. Full details of the complaint should only be disclosed in an open meeting following the case decision by the Commissioner.

Additionally, a District should hold in confidence records of active ASA investigations. These

records may be released to the public after the ASA investigation is concluded. An investigation is concluded when the Commissioner has decided whether an agricultural activity is creating or will create pollution that requires an agricultural stewardship plan. Any request made to the District for records of active investigations under the ASA should be referred to the attorney who represents the District.

#### **SECTION D - SUBSEQUENT VISITS TO FARM TO CHECK IMPLEMENTATION**

In most cases, after the site investigation has been completed, no further on-site reviews are necessary once the Commissioner has sent a notice advising that the complaint is unfounded and a stewardship plan will not be required. However, subsequent on-site reviews are necessary when an ASA plan is required. The purpose of the subsequent on-site review is to determine whether the owner or operator is implementing his ASA plan in accordance with the implementation schedule.

Subsequent on-site reviews have enforcement implications, which are the Commissioner's responsibility. Districts should not undertake subsequent visits without the Commissioner's express approval. (This need for agreement from the Commissioner does not apply to a District's best management practices "spot-check" to determine compliance with a District cost-share agreement, even for a practice installed to meet ASA requirements.)

#### **SECTION E – ISSUANCE OF A CORRECTIVE ORDER**

If an owner or operator who has been issued a notice under the Act fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures, the Commissioner will issue a corrective order to such owner or operator. The order will require that such activity be accomplished within a stated period of time.

The Commissioner will issue a corrective order only after first holding an informal fact-finding conference held pursuant to the Virginia Administrative Process Act (Va. Code § 2.2-4000 et seq.) (APA). Informal fact-finding conferences are used to determine the factual basis for the Commissioner's decisions under the ASA.

If the owner or operator fails to implement the corrective order, the Commissioner may seek a court order from the appropriate circuit court requiring the owner or operator to implement a plan developed by the Commissioner or authorizing the Commissioner to enter the property to take action necessary to implement the plan and to recover such implementation costs from the owner or operator.

#### **SECTION F - SOURCES OF ASSISTANCE FOR OWNERS OR OPERATORS**

There are several sources of assistance available to owners or operators to address water pollution problems and to develop stewardship measures and plans. Areas of assistance and possible sources are listed below:

1. *Technical Assistance*

Planning and, if necessary, engineering assistance is often available through:

- Local Soil and Water Conservation District
- Virginia Department of Conservation and Recreation
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Cooperative Extension
- Virginia Department of Agriculture and Consumer Services
- Private consultants

## 2. *Cost-Sharing and Financial Assistance*

Cost-share assistance that may be available to implement plans is offered by:

- Local Soil and Water Conservation District
- U. S. Department of Agriculture, Farm Service Agency
- U. S. Department of Agriculture, Natural Resources Conservation Service
- Virginia Department of Environmental Quality (Ag BMP Loan Program)

## 3. *Financial Planning*

Financial planning is always a consideration when making decisions that affect a farming operation. These organizations can be of assistance to the farmer in his financial planning:

- Virginia Cooperative Extension (e.g., Farm Management Agents)
- Private financial institutions (e.g., commercial banks, agricultural financing organizations)

## **SECTION G - DEVELOPING A PLAN THAT COMPLIES WITH ASA**

The plan must include the following minimum requirements under the ASA:

- Stewardship measures needed to prevent the water pollution
- Implementation schedule.

The plan should also include:

- A map showing area of concern and affected water feature
- Statement of pollution problem
- Signature page for the owner or operator, local district director, and Commissioner

The owner or operator will receive a letter from the Commissioner notifying the owner or operator of the results of the investigation. This letter specifies the components of the agricultural activity that are causing or will cause water pollution. All of these components must be addressed in the plan.

If necessary, simple plans may be converted into more sophisticated formats after the plan has been submitted. Planners should be sensitive to the fact that the owner or operator has a second deadline to meet; the owner or operator must begin implementing the plan within six months of

receiving the official notice that the plan has been approved.

Amendments to plans are acceptable as long as the amendments prevent or eliminate the water pollution. Amendments must be reviewed by the Commissioner before the plan completion date. An amendment that necessitates an extension of time will not be denied simply because the time of completion will be delayed; however, the Commissioner may consider whether the additional time is needed because of the actual change in plans or because of any lack of due diligence by the owner or operator.

To make the planning process most effective, the plan should include options for owners or operators to solve their water pollution problems whenever possible. There are often a variety of best management practices that can be employed to address a single pollution problem. Thus, the planner will often have a wide variety of options from structural practices to changes in operating methods that can be offered to the owner or operator as solutions to the pollution problem. These options need not be the most expensive or employ the most sophisticated technology; they only need to prevent the pollution in question within the timeframe of the plan. A plan that merely substitutes one form of pollution for another, however, will not be accepted by the Commissioner.

## **SECTION H - VIOLATIONS AND PENALTIES**

Under the ASA, the Commissioner will issue a corrective order when the owner or operator fails to comply with the ASA. Further, if the owner or operator fails to allow the Commissioner or the investigator entry onto the property to investigate, implement stewardship measures, or ensure stewardship measures are being maintained, the Commissioner may seek a court order from the appropriate circuit court authorizing such entry onto the property.

The ASA provides persons aggrieved by decisions of the Commissioner the right to appeal such decisions to the Virginia Soil and Water Conservation Board and thereafter to the circuit court in accordance with the APA.

If an owner or operator fails to comply with the ASA, he may be subject to civil penalties and orders issued by the Commissioner. (See Appendix B, Civil Penalty Matrix for the Agricultural Stewardship Act Program.)

## **SECTION I - INTERGOVERNMENTAL COOPERATION**

The ASA requires that agricultural activities that are causing or will cause water pollution be corrected. It is very important that agencies of local, state, and federal government work together in a cooperative effort using a common-sense approach to assist owners or operators in effectively correcting these problems. Some of the agencies, besides the local District and District Board, that work in cooperation with the Commissioner and VDACS on water quality issues include the Department of Environmental Quality, DCR, the Natural Resources Conservation Service of the U.S. Department of Agriculture, Virginia Cooperative Extension, Virginia Department of Forestry, and localities.

VDACS serves as the primary coordinating agency for administering the ASA. VDACS's ASA

staff assists the Commissioner with investigations and enforcement and with communicating the results of the investigations with complainants. In addition to developing these guidelines, VDACS initiates the annual reporting and assessment processes. The purpose of the annual reporting and assessment process is to identify trends and needs and to seek means of addressing any problems that develop in administering the ASA.

# APPENDIX A

**Agricultural Stewardship Act**

## **Code of Virginia (“Agricultural Stewardship Act”)**

### § 3.2-400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Board" means the Soil and Water Conservation Board.

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1.

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with § 2.2-4019.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land where an agricultural activity occurs.

"Pollution" means any alteration of the physical, chemical, or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" or "measures" mean measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution that reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods, or other alternatives.

"Stewardship measures" or "measures" includes: (i) agricultural water quality protection management measures described in the Virginia Agricultural Best Management Practices Manual; and (ii) agricultural water quality protection management measures contained in the U.S. Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

(1996, c. 773, § 10.1-559.1; 2000, c. 973; 2008, c. 860.)

### § 3.2-401. Exclusions from chapter.



This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1; or (ii) a permit issued by the State Water Control Board, applies.

(1996, c. 773, § 10.1-559.2; 2008, c. 860.)

§ 3.2-402. Complaint; investigation; agricultural stewardship plan.

A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district where the land lies determine the validity of the information within 21 days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.

B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.

C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances that could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district where the agricultural activity is located. The notice shall state that, within 60 days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan that includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within 30 days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date that the owner or operator received the notice that the agricultural activity is creating or will create pollution.

D. The plan shall include an implementation schedule, and implementation of the plan shall be completed within a period specified by the Commissioner, based upon the seasons and other temporal considerations so that the period is that during which the possibility of success in establishment or construction of the measures required in the plan is the greatest, which shall not exceed 18 months from receipt of notice. The Commissioner may grant an extension of up to 180 days if: (i) a hardship exists; and (ii) the request for an extension was made not later than 60 days before the scheduled completion date. The Commissioner shall, within 30 days of receiving the request, inform the owner or operator whether or not an extension has been granted.

E. After implementing the approved plan according to the provisions of this chapter, the owner or operator shall maintain the stewardship measures established pursuant to the plan. The owner or operator may change the agricultural activity so long as the Commissioner is notified.

F. If the Commissioner determines that substantial evidence does not exist to prove that an agricultural activity is creating or will create pollution or that any pollution was caused by

unusual weather events or other exceptional circumstances or that the pollution is not a threat to human health, animal health, or aquatic life or recreational or other beneficial uses, he shall inform the complainant and the owner or operator of his determination. Upon approving the owner's or operator's agricultural stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved.

(1996, c. 773, § 10.1-559.3; 2000, c. 973; 2008, c. 860.)

§ 3.2-403. Issuance of corrective orders.

A. If any owner or operator who has been issued a notice under § 3.2-402 fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures as provided in § 3.2-402, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

B. A corrective order issued pursuant to subsection A shall be issued only after an informal fact-finding conference, with reasonable notice being given to the owner or operator, or both, of the time, place, and purpose thereof, and shall become effective not less than five days after date of delivery to the last known address as provided in subsection C. The corrective order shall be suspended pending appeal by the recipient made within five days after delivery of such order to the last known address of the owner or operator.

C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt requested, sent to the last known address of the owner or operator, or by personal delivery by an agent of the Commonwealth.

D. Notwithstanding other provisions of this chapter, if the Commissioner determines that a recurring polluting condition that is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity that is causing or is likely to cause an imminent or substantial danger to: (i) the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other beneficial uses, the Commissioner may issue, without advance notice, informal fact-finding conference, or hearing, an emergency corrective order. Such order may direct the owner or operator of the agricultural activity, or both, to cease immediately all or part of the agricultural activity and to implement specified stewardship measures or any necessary emergency measures within a stated period of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending, or canceling the emergency corrective order.

E. The Commissioner shall not issue a corrective order to any land owner or operator if the person is:

1. Actively implementing the agricultural stewardship plan that has been reviewed by the district where the agricultural activity is located and approved by the Commissioner, or
2. Actively implementing stewardship measures that have failed to prevent pollution, if the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(1996, c. 773, § 10.1-559.4; 2000, c. 973; 2008, c. 860.)

§ 3.2-404. Right of entry; court enforcement.

A. The district or the Commissioner may enter land that is the subject of a complaint, after notice to the owner or operator, to determine whether the agricultural activity is causing or will cause pollution of state waters.

B. Upon failure of any owner or operator to allow the Commissioner entry in accordance with subsection A, to implement stewardship measures in the time specified in a corrective order, or to maintain stewardship measures in accordance with subsection E of § 3.2-402, the Commissioner may present to the circuit court of the county or city where the land is located, a petition asking the court to require the owner or operator to allow the Commissioner entry or to carry out such measures within a specified time. If the owner or operator fails to implement the stewardship measures specified in the court order, the Commissioner may enter the land involved and implement the measures. The Commissioner may recover the costs of implementing the stewardship measures from the owner or operator.

(1996, c. 773, § 10.1-559.5; 2000, c. 973; 2008, c. 860.)

§ 3.2-405. Appeal.

Decisions of the Commissioner may be appealed by persons aggrieved to the Board and thereafter to the circuit court in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

(1996, c. 773, § 10.1-559.6; 2008, c. 860.)

§ 3.2-406. Penalties; injunctions; enforcement actions.

A. Any person violating § 3.2-403 or 3.2-404 shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner or Board. Each day the violation continues is a separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, factors to be considered shall include the willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this chapter.

(1996, c. 773, § 10.1-559.7; 2008, c. 860.)

§ 3.2-407. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board may collect civil penalties that are owed in the same manner as provided by law in respect to judgment of a circuit court.

(1996, c. 773, § 10.1-559.8; 2008, c. 860.)

§ 3.2-408. Guidelines to be published by Commissioner; report.

A. In consultation with the districts, the Department of Conservation and Recreation, and interested persons, the Commissioner shall develop guidelines for the implementation of this chapter. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within 90 days of the effective date of this section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for publication in the Virginia Register of Regulations. At least 30 days shall be provided for public comment after the publication of the proposed guidelines. After the close of the public comment period, the Commissioner shall consider the comments that he has received and may incorporate any changes into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall submit final guidelines for publication in the Register. The guidelines shall become effective on April 1, 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been published in the Register and a public comment period has been provided.

B. The Commissioner shall compile a report by August 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties that may have been assessed. The Commissioner shall have the discretion to exclude and keep confidential specific information regarding ongoing investigations. The Commissioner shall: (i) provide the report to the Board, the Department of Conservation and Recreation, and to every district; (ii) publish notice in the Virginia Register that the report is available; and (iii) make the report available to the public upon request.

(1996, c. 773, § 10.1-559.9; 2008, c. 860.)

§ 3.2-409. Ordinances.

A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural stewardship plan development program. Ordinances adopted hereunder may contain only provisions that parallel §§ 3.2-401 and 3.2-402. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in § 3.2-402.

B. This section shall not apply to any ordinance: (i) in existence on July 1, 1996; or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

(1996, c. 773, § 10.1-559.10; 2008, c. 860.)

§ 3.2-410. Construction of chapter.

Nothing in this chapter shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act.

(1996, c. 773, § 10.1-559.11; 2008, c. 860.)

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# APPENDIX B

**Civil Penalties Matrix for the Agricultural  
Stewardship Act Program**

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Civil Penalties Matrix for the Agricultural Stewardship Act Program (Authority: Section 3.2-406 of the Code of Virginia)

#### VIOLATION

“Any person violating Section 3.2-403 or Section 3.2-404 shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner of Agriculture and Consumer Services. Each day the violation continues shall constitute a separate offense.” (Section 3.2-406(A) of the Code of Virginia)

The following are violations of Section 3.2-403 of the Code of Virginia:

1. The owner or operator fails to submit an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia);  
  
(Base civil penalty-\$200)
2. The owner or operator fails to begin actively implementing an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia);  
  
(Base civil penalty-\$500)
3. The owner or operator fails to complete the implementation of an Agricultural Stewardship Plan after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia);  
  
(Base civil penalty-\$500)
4. The owner or operator fails to maintain the required stewardship measures after the Commissioner has issued a Corrective Order (Authority: Section 3.2-403(A) of the Code of Virginia); and  
  
(Base civil penalty-\$250)
5. The owner or operator fails to comply with an Emergency Corrective Order (Authority: Section 3.2-403(D) of the Code of Virginia).  
  
(Base civil penalty-\$500)

The following are violations of Section 3.2-404 of the Code of Virginia:

The owner or operator denies the Commissioner or his designee the right of entry (Authority: Section 3.2-404(A) of the Code of Virginia).

(Base civil penalty-\$500)

The following factors shall be considered in determining the amount of any civil penalty:

1. If there is willfulness of violation, add \$500 to the base civil penalty;
2. If there is history of noncompliance with Agricultural Stewardship Act, add \$1,000 to the base civil penalty;
3. If there is failure of owner in notifying, containing, and cleaning up any discharge, add \$1,000 to the base civil penalty;
4. If there is damage or injury to state waters or the impairment of its uses, add \$1,500 to the base civil penalty; and
5. When the injury is of such a nature and degree as to interfere with general health, welfare and property, add \$1,500 to the base civil penalty.
6. As stated in Section 3.2-406, the maximum civil penalty the Commissioner may assess per violation is \$5,000.
7. If any combination of applicable penalties under this matrix exceeds \$5,000 for a single violation, \$5,000 is the maximum amount that will be assessed for that violation.



# APPENDIX C

**Steps In Addressing Agricultural Stewardship Act  
Complaints**

## STEPS IN ADDRESSING AN ASA COMPLAINT

1. **Commissioner's Office receives complaint:**
  - Commissioner's Office reviews complaint and determines if the ASA has jurisdiction.
    - If not under ASA's jurisdiction, the complaint is dismissed.
2. **Commissioner's Office determines whether the investigation is necessary:**
  - In cases with non-anonymous complaints, an investigation is required.
  - In cases with anonymous complaints, the Commissioner has the option to investigate.
3. **If investigation is needed:**
  - Commissioner's Office contacts local Soil and Water Conservation District and informs it of the complaint.
  - District has five days to notify the Commissioner's Office whether or not it will investigate, unless the District has already indicated to the Commissioner that they will not participate in the investigation process.
4. **Contact the owner/operator to inform him or her of the complaint and the need to investigate, followed by a letter.**
  - If owner or operator denies request to enter land, the Commissioner may seek a court order.
5. **Investigate complaint and report findings to Commissioner's Office within 21 days of receiving complaint.**
6. **Commissioner's Office reviews investigation report and, if needed, gathers more information. Commissioner's Office then makes decision as to whether complaint is founded, then contacts owner or operator and the District with findings within 30 days of receiving investigation report.**
  - If complaint is unfounded:
    - Action on complaint complete.
    - Complainant contacted and informed on reasons why complaint was unfounded.
  - If complaint is founded – Finding is reviewed and discussed with owner or operator:
    - Owner or operator accepts decision.  
or
    - Owner or operator appeals decision to the Virginia Soil and Water Conservation Board.

- Owner or operator may appeal Board’s decision to local Circuit Court.
7. **Owner or operator develops plan to address pollution and sends copy to the Commissioner’s Office and District within 60 days after receiving notice of investigation findings and of the need to develop a plan.**
    - If owner or operator fails to develop own plan, Commissioner may seek court order requiring owner or operator to implement plan developed by VDACS.
  8. **District may review plan and send recommendations to the Commissioner’s Office.**
  9. **Commissioner’s Office reviews plan and any district recommendations, then notifies owner or operator.**
    - **Plan approved, and/or amended with conditions.**  
or
    - **Plan rejected:**
      - *Owner or operator develops new plan and repeats submittal process.*  
or
      - *Owner or operator appeals through the process described in item 6.*
  10. **Commissioner’s Office contacts complainant, informs him of action taken and plan implementation completion date.**
  11. **Owner or operator is notified that plan is necessary, Commissioner’s Office will check to ensure that he has begun implementing the plan within the time specified by the Commissioner.**
    - Implementation has begun.  
or
    - Implementation has not begun:
      - Commissioner institutes an informal fact-finding conference with the owner or operator.
      - ASA requires Commissioner to issue a corrective order (via certified mail, return receipt requested) to farmer owner or operator at this point.
  12. **By the completion date, a site review will be conducted to ensure complete plan implementation.**
    - Once plan is implemented, owner or operator is required to maintain stewardship measures.
    - Hardship cases can receive a 180-day extension if owner or operator’s request is received 60 days prior to completion date and is approved by the Commissioner’s Office.

# APPENDIX D

**Steps to Consider During an  
Agricultural Stewardship Act Investigation**

## Steps to Consider During An Agricultural Stewardship Act Investigation

When beginning an investigation, it is likely to help if you keep several key questions in the back of your mind. These questions are:

1. What pollutant (sediment, nutrient, or toxin) was the subject of the complaint?
2. What water feature (stream, river, etc.) was the subject of the complaint?
3. Is there a physical barrier (e.g., buffer, berm, slope, etc.) that would help prevent the pollutant in question (soil, nutrients, toxins, etc.) from reaching the water feature?
4. Is the farmer using any BMPs that are designed to help prevent the pollutant in question from reaching the water feature?

With these questions in mind, begin to assess the physical layout and the farmer's operation of the field, feedlot or pasture that is the subject of your investigation. Some things to assess are as follows (Use the ones that would be applicable to the pollutant that was the subject of the complaint):

- ❖ Is there evidence of erosion?
- ❖ What sources of nutrients are used or produced in the operation?
- ❖ What are the characteristics of the topography in relation to the water feature?
  - Slope
  - Sink holes
  - Soil types
  - Storm drains
  - Etc.
- ❖ Is there a buffer or other barrier between the site where the problem is alleged to be occurring and the water feature?
- ❖ If there is a buffer, what are the characteristics for the buffer?
  - Mixed vegetation (trees and shrubs, etc.)
  - Grass
  - Etc.
- ❖ What condition is the buffer in?
  - Well vegetated
  - Killed areas
  - Eroded
  - Etc.
- ❖ Does the farmer use nutrient management practices, and if so what are they?
- ❖ Are stream banks eroded, and if so, what was the cause?

- Natural causes
  - Livestock
  - Etc.
- ❖ Are BMPs used on the land, such as residue management, conservation tillage, sod waterways, animal waste system, hardened access, etc.?
  - ❖ Are BMPs well maintained?
    - Is sod waterway or filter strip being filled with sediment?
    - Is animal waste storage facility emptied on schedule?
    - Is the exclusion fence in-tact and functioning?
    - Etc.

This is not an all-inclusive list because there may be other site-specific and complaint-specific circumstances that you'll want to consider, but this gives you an idea of what to assess.

Taking what you've learned about this operation in your assessment, begin to answer the following questions:

- Can the alleged pollution be a product of this farming operation?
- Is there a route from the field, feedlot or pasture that the pollutants would travel easily (e.g., unobstructed by a physical barrier) to the water body?
- Given the management of the field, feedlot, or pasture and other factors, how large is the level of pollution that could be occurring (e.g., large, medium, minimal, none)?
- If there is a pollution occurring, could the pollution in question be occurring from natural causes (e.g., natural stream bank erosion, severe weather, etc.)?
- If there is pollution occurring, was it caused by circumstances beyond the farmer's control?

Using your answers to these questions, you can begin to write up your investigation report and formulate your opinion regarding this case. If you have questions during this process, please contact one of the Agricultural Stewardship Coordinators.

# APPENDIX E

**Soil and Water Conservation District Policy for Handling  
Agricultural Stewardship Act Complaints**

**Soil and Water Conservation District Policy for Handling Agricultural Stewardship Act (ASA) Complaints**

**District:**

Name:
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**Primary District Contact Person (with delegated authority to make ASA decisions):**

Name: Title:	Email:	Phone:
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**Secondary District Contact Person (to be cc'd on notification of complaint received), if preferred:**

Name: Title:	Email:	Phone:
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**In handling ASA complaints, the District generally prefers\* to:**

- perform the investigation to determine the validity of the complaint.
- assist VDACS by performing a joint investigation.
- not participate in the investigation process

(\*It is understood that the District reserves the right to handle ASA complaints differently than indicated on this form. Many prefer to handle on a case-by-case basis, depending on the circumstances.)

**Comments:**


**VDACS intends to send all correspondence and associated documents (including notification and complaint tracking forms) to Districts electronically.**

**District boards should re-visit this policy annually to re-affirm the same individual(s) are authorized to make these decisions, or whenever there is a personnel change that would impact this policy. Re-affirmations and new designations of individuals should be communicated to VDACS by September 30 of each year.**

**Approved by: \_\_\_\_\_ Date: \_\_\_\_\_**