



Final Regulation Agency Background Document

Agency name	Virginia Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-405
Regulation title	Regulations for the Application of Fertilizer to Nonagricultural Lands
Action title	This new regulation seeks to prescribe training and application requirements for contractor-applicators and licensees who apply fertilizer on non-agricultural land.
Date this document prepared	May 26, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The regulation is designed to ensure that contractor-applicators and licensees who apply fertilizer on nonagricultural land are properly trained and certified in order to minimize the risk of environmental harm resulting from the improper application of fertilizers.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

On May 26, 2011, the Board of Agriculture and Consumer Services took final action to adopt the regulation entitled "Regulations for the Application of Fertilizer to Nonagricultural Lands." This action is to be effective as provided in the Administrative Process Act.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 686 of the Acts of the 2008 General Assembly amended the fertilizer statute, § 3.2-3600 et seq. Code of Virginia (Code). § 3.2-3602.1 of the Code requires the Board of Agriculture and Consumer Services to promulgate regulations to certify the competency of contractor-applicators and licensees who apply fertilizer to nonagricultural lands. The authority is mandatory.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The improper use and over-application of fertilizers on nonagricultural land, particularly the off-target application of fertilizer on impervious surfaces resulting from lawn care activities, are two significant contributors to excess nutrient run-off and subsequent degradation in water quality. This regulation seeks to improve water quality in the Chesapeake Bay and in the rivers, streams, and lakes of the Commonwealth through the establishment of training, certification, and recordkeeping requirements that are intended to reduce the flow of excess nutrients into those bodies of water. At present, there are no training, certification, or recordkeeping requirements for contractor-applicators or licensees who apply fertilizer on nonagricultural land.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

This regulation sets forth the application process for individuals to become certified applicators of fertilizer to nonagricultural land, the general knowledge requirements for such certified fertilizer applicators, the core areas on which applicants for certification will be tested, and the certification renewal process. This regulation sets forth less stringent training requirements for individuals who also apply fertilizer on nonagricultural land but who will not be seeking certified

applicator status. This regulation prescribes recordkeeping requirements for the application of fertilizer by contractor applicators and licensees, and it also provides that penalties may be assessed for violations.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*
If there are no disadvantages to the public or the Commonwealth, please indicate.

The certification, training, application and recordkeeping requirements set forth by this regulation are expected to have a beneficial impact on the quality of the water in Virginia’s streams, lakes, and rivers, and ultimately, on the environmental health of the Chesapeake Bay. The regulation will also address the growing concern over the environmental impact of off-target applications of fertilizer on impervious surfaces that result primarily from lawn care activities. This regulation will not pose a disadvantage to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made to the text of the proposed regulation following the publication of the proposed stage.

Section number	Requirement at proposed stage	What has changed	Rationale for change
N/A	N/A	N/A	N/A

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Urban Committee of the Virginia	1. Under Section 2VAC5-405-20 B (2), the referenced “standards and criteria”	1. The Board-approved training required in this regulation will reference the most current qualifications and standards for

<p>Association of Soil and Water Conservation Districts</p>	<p>should be clarified with a title and date of the <i>specific</i> manual. (It should also be confirmed that the “standards and criteria” require that soil test results and associated recommendations be followed.)</p> <p>2. Section 2VAC5-405-100 requires record-keeping of fertilizer applications. Requirements for record-keeping of <i>soil test results and recommendations</i> should also be included in this section.</p> <p>3. In addition to record-keeping, <i>reporting</i> of fertilizer applications and associated nutrient management activities should be mandatory. This will facilitate Virginia’s reporting of actions taken to accomplish goals of the Chesapeake Bay clean-up programs.</p> <p>4. We recommend striking #2 of Section 2VAC5-405-50, or at a minimum, restricting its application to small acreages.</p>	<p>individuals who prepare nutrient management plans, as well as the most current criteria for the development of such plans promulgated by the Department of Conservation and Recreation pursuant to § 10.1-104.2 of the Code. Soil analysis techniques and interpretation are two of the core areas on which certified applicators will have to demonstrate competency. The continued education requirements in this regulation also require review of soil analysis techniques.</p> <p>2. Chapters 341 and 353 of the 2011 General Assembly amended the Fertilizer Statute to provide a new definition for the term “<i>lawn fertilizer.</i>” The use of lawn fertilizer, which contains phosphorous, will be allowed under limited conditions, such as the repair or renovation of turf areas where soil tests performed within the previous three years indicate a nutrient deficiency. Once this particular regulatory action is finalized, the agency will move to amend it to include the new provisions required by the statute.</p> <p>3. Chapters 341 and 353 of the 2011 General Assembly amended the Fertilizer Statute to establish certain reporting requirements for the application of lawn fertilizer and lawn maintenance fertilizer. Once this particular regulatory action is finalized, the agency will move to amend it to include the new provisions required by the statute.</p> <p>4. The exemptions from certification were unanimously recommended by the Technical Advisory Committee that assisted the agency in the drafting of this regulation.</p> <p>5. Chapter 686 of the 2008 General Assembly did not provide the Board of</p>
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	5. We recommend that a fee structure be implemented to ensure that the program is self-supporting.	Agriculture and Consumer Services with the authority to charge fees for the development and implementation of this regulation. The Board may only charge civil penalties of up to \$250 to any contractor-applicator or licensee who fails to comply with this regulation.
Donna Pugh Johnson, Virginia Agribusiness Council	Believes that the regulations will have a greater impact on the professional, trained, experienced, and registered contractor-applicators than they will on untrained, inexperienced, and unregistered contractor-applicators. Requests that efforts be made to seek compliance by unregistered contractor-applicators. Provides suggestions for training options.	The agency appreciates the suggestions and will consider them as the agency implements these regulations and as the Board approves training curricula.
Kristen Hughes Evans, Chesapeake Bay Foundation	Expresses support of the proposed regulations as well as the regulatory provisions required by amendments enacted by the 2011 General Assembly.	The agency appreciates this feedback.
Professional Stadium and practice facility fertilization		Comment was not germane to this regulation.

All changes made in this regulatory action

*Please list all changes that are being proposed and the consequences of the proposed changes.
Describe new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	10	N/A	This section provides definitions for specific terms used throughout the regulation.
N/A	20	N/A	This section requires licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural land to employ or retain

			<p>the services of a certified fertilizer applicator. This section also prescribes requirements regarding fertilizer application and recordkeeping. This section also provides who may apply fertilizer to nonagricultural land for commercial purposes. The requirements proposed in this section are intended to ensure that the individuals applying fertilizer to nonagricultural land for commercial purposes have received training or are applying fertilizer under the supervision of an individual who has received training so as to minimize improper application of fertilizer.</p>
N/A	30	N/A	<p>This section establishes the qualifications for certification as a certified fertilizer applicator. The intent of this section is to minimize improper application of fertilizer.</p>
N/A	40	N/A	<p>This section establishes the application process for certification, the appeal process for individuals denied certification, and the length of time a certification remains valid.</p>
N/A	50	N/A	<p>This section lists those individuals who are exempt from certification. These exemptions are included in this regulation due to the controlled environment in which the exempt individual is applying fertilizer or due to the Department of Conservation and Recreation certification held by the individual.</p>
N/A	60	N/A	<p>This section establishes the general knowledge requirements for certified fertilizer applicators, as well as the continuing education requirements. The intent of this section is to ensure the environmentally safe use of fertilizer by requiring applicants for certification to demonstrate their practical knowledge of the use and handling of fertilizer.</p>
N/A	70	N/A	<p>This section establishes the process for renewing certification.</p>
N/A	80	N/A	<p>This section enables non-certified applicators not under the direct on-site supervision of a certified fertilizer applicator to apply fertilizer for commercial purposes to nonagricultural land if they have successfully completed individual applicator training. The intent</p>

			of this section is to ensure the environmentally safe use of fertilizer while not requiring that every applicator obtain certification.
N/A	90	N/A	This section requires licensees and contractor-applicators to maintain training records for those employees who are trained applicators to ensure these employees apply fertilizer properly.
N/A	100	N/A	This section requires the maintenance of records containing specific information regarding each commercial application of fertilizer to nonagricultural land to assist the Commissioner in identifying potential off-target or otherwise improper applications of fertilizer.
N/A	110	N/A	This section authorizes the Commissioner to assess monetary penalties for non-compliance and provides the Commissioner with the option to cancel the violating party’s certification. These penalties are intended to encourage compliance by individuals who intend to apply or supervise the application of fertilizer on nonagricultural land.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Promulgation of this regulation is required by statute.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulation will have no impact on the institution of the family and family stability.