



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Soil and Water Conservation Board
Virginia Administrative Code (VAC) citation	4 VAC 5-15-150 (companion exempt action renumbers this section to 4 VAC 50-85-140)
Regulation title	Nutrient Management Training and Certification Regulations
Action title	Amending 4 VAC 5-15-150 of the Virginia Soil and Water Conservation Board's Nutrient Management Training and Certification Regulations to clarify that golf course nutrient management plans can be good for up to five years in accordance with Chapters 341 and 353 of the 2011 Virginia Acts of Assembly that created § 10.1-104.5.
Date this document prepared	December 29, 2013

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

House Bill 1831 and Senate Bill 1055 (Chapters 341 and 353 of the 2011 Virginia Acts of Assembly respectively) created a § 10.1-104.5 requiring nutrient management plans for golf courses. Subsection B required that “[s]uch nutrient management plans shall be revised and resubmitted for approval to the Department **every five years** thereafter or upon a major renovation or redesign of the golf course lands, whichever occurs sooner”.

The Virginia Agribusiness Council requested that the Nutrient Management Training and Certification Regulations be amended to clarify that such plans may be good for up to five years

in accordance with § 10.1-104.5. Accordingly, this action amends Section 4 VAC 5-15-150 D 1 of the Virginia Soil and Water Conservation Board’s Nutrient Management Training and Certification Regulations to provide the following clarification:

D. Plan maintenance and revisions.

1. A site-specific nutrient management plan developed in accordance with all requirements of these regulations, including specified crops or crop rotations, shall provide information on soil fertility and seasonal application of required nutrients for one to five years of crop production. Plans developed for a period of time greater than three years and up to five years shall be limited to sites in permanent pasture or continuous hay, **or that are golf courses.**

Absent this clarification, there was concern expressed that golf course nutrient management plans, absent a reading of the Code of Virginia, could be limited to being good for only three years.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

None

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 taking the action, and (3) the title of the regulation.

On December 11, 2013, the Virginia Soil and Water Conservation Board approved, authorized, and directed the filing of this amendment to Section 4 VAC 5-15-150 of the Nutrient Management Training and Certification Regulations as a fast-track final action. The Board noted that their authorization extends to, but is not limited to, the drafting of the documents and documentation as well as the coordination necessary to gain approvals from the Department of Planning and Budget, the Secretary of Natural Resources, the Governor, the Attorney General, and the Virginia Registrar of Regulations for the publication of this fast-track final regulatory action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Sections 10.1-104.2 D 3 and 10.1-505 of the Code of Virginia provide authority to the Virginia Soil and Water Conservation Board to promulgate Nutrient Management Training and Certification Regulations and amendments thereto.

§ 10.1-104.2. Voluntary nutrient management training and certification program.

D. The Virginia Soil and Water Conservation Board shall adopt regulations:

3. Providing for criteria relating to the development of nutrient management plans for various agricultural and urban agronomic practices, including protocols for use by laboratories in determining soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purpose of nutrient management;

§ 10.1-505. Duties of Board.

In addition to other duties and powers conferred upon the Board, it shall have the following duties and powers:

10. To adopt regulations (i) for the operation of the voluntary nutrient management training and certification program as required by § 10.1-104.1 and (ii) that amend the application rates in the Virginia Nutrient Management Standards and Criteria as required by § 10.1-104.2:1.

Section 10.1-104.5 B of the Code of Virginia specifies that golf course nutrient management plans may be good for up to five years. This regulatory action amends the Nutrient Management Training and Certification Regulations to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5.

§ 10.1-104.5. Nutrient management plans required for golf courses; penalty.

A. On or before July 1, 2017, all persons that own land operated as a golf course and upon which fertilizer, manure, sewage sludge, or other compounds containing nitrogen or phosphorous are applied to support turf, plant growth, or other uses shall develop and implement nutrient management plans for such land in accordance with the regulations adopted pursuant to § 10.1-104.2. However, such lands shall be exempt from the application rate and timing provisions contained in any regulations developed pursuant to § 10.1-104.2 if research involving nutrient application rate and timing is conducted on such lands.

B. Nutrient management plans developed pursuant to this section shall be submitted to the Department. The Department shall approve or contingently approve such nutrient management plans within 30 days of submission. **Such nutrient management plans shall be revised and resubmitted for approval to the Department every five years thereafter or upon a major renovation or redesign of the golf course lands, whichever occurs sooner.**

C. Golf courses shall maintain and properly implement approved nutrient management plans, planning standards, and specifications on all areas where nutrients are applied.

D. Nutrient management plans shall be made available to the Department upon request.

E. The Department shall (i) provide technical assistance and training on the development and implementation of nutrient management plans, planning standards, and specifications and (ii) establish, prior to July 1, 2015, a cost-share program specific to golf courses for implementation of this section.

F. Any information collected pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

G. A golf course owner found to be in violation of this section after July 1, 2017, shall be given 90 days to submit a nutrient management plan to the Department for approval before a \$250 civil penalty is imposed. All civil penalties imposed under this section shall be deposited in the Nutrient Management Training and Certification Fund (§ 10.1-104.2).

H. Golf courses in compliance with this section shall not be subject to local ordinances governing the use or application of fertilizer.

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 the regulation 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.

This is a technical amendment requested by the Virginia Agribusiness Council to clarify Section 4 VAC 5-15-150 D 1 of the Virginia Soil and Water Conservation Board’s Nutrient Management Training and Certification Regulations to ensure that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

In the past, a clarifying technical amendment of this nature to conform state regulations with the Code of Virginia would typically have been exempt; however, legislation was passed in 2011 limiting the exemption in § 2.2-4006 A 4 a, to those actions taken within 90 days of the of the law's effective date.

House Bill 1831 and Senate Bill 1055 (Chapters 341 and 353 of the 2011 Virginia Acts of Assembly respectively) created a § 10.1-104.5 requiring nutrient management plans for golf courses and established that such nutrient management plans shall be revised and resubmitted for

approval to the Department **every five years** thereafter or upon a major renovation or redesign of the golf course lands, whichever occurs sooner.

A review of the regulations in 2011 following the passage of the legislation did not identify a need for any amendments to the regulations. However, in recent months, the Virginia Agribusiness Council has requested that the Nutrient Management Training and Certification Regulations be amended to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5.

Accordingly, this action to amend Section 4 VAC 5-15-150 D 1 of the Virginia Soil and Water Conservation Board’s Nutrient Management Training and Certification Regulations cannot be considered exempt as over 90 days have lapsed since the passage of the legislation and the use of a fast-track action is the next best option available to make this conforming technical amendment.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

This regulatory action amends the Nutrient Management Training and Certification Regulations to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5.

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.*

None. This is a clarifying technical amendment to conform state regulations with the Code of Virginia as requested by the Virginia Agribusiness Council. The regulatory amendment creates no new requirements.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

None.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

None.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, 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.

This regulatory action establishes no new requirements beyond those already established in § 10.1-104.5 of the Code of Virginia. This is a clarifying technical amendment to conform state regulations with the Code of Virginia as requested by the Virginia Agribusiness Council.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

This action has no economic impacts associated with it.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The Virginia Agribusiness Council requested this clarifying technical amendment.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less</p>	<p>This regulatory action establishes no new requirements beyond those already established in § 10.1-104.5 of the Code of Virginia.</p>

than \$6 million.	
Benefits expected as a result of this regulatory proposal.	This clarifying technical amendment will conform state regulations with the Code of Virginia as requested by the Virginia Agribusiness Council.
Projected cost to the state to implement and enforce this regulatory proposal.	None.
Projected cost to localities to implement and enforce this regulatory proposal.	None.
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	None.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

This is a clarifying technical amendment to conform state regulations with the Code of Virginia as requested by the Virginia Agribusiness Council. The alternative is to leave the regulations as currently promulgated; however, the Virginia Soil and Water Conservation Board and the Department of Conservation and Recreation wish to be responsive to the Council’s request.

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.

It is not anticipated that this regulatory action will have an impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

This regulatory action amends the Nutrient Management Training and Certification Regulations to clarify that golf course nutrient management plans may be good for up to five years in accordance with § 10.1-104.5 of the Code of Virginia.

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
4 VAC 5-15-150 D 1	Pursuant to § 10.1-104.5 of the Code of Virginia, golf course nutrient management plans may be good for up to five years.	<p>This action amends Section 4 VAC 5-15-150 D 1 of the Virginia Soil and Water Conservation Board’s Nutrient Management Training and Certification Regulations to provide the following clarification:</p> <p style="padding-left: 40px;">D. Plan maintenance and revisions.</p> <p style="padding-left: 80px;">1. A site-specific nutrient management plan developed in accordance with all requirements of these regulations, including specified crops or crop rotations, shall provide information on soil fertility and seasonal application of required nutrients for one to five years of crop production. Plans developed for a period of time greater than three years and up to five years shall be limited to sites in permanent pasture or continuous hay, <u>or that are golf courses.</u></p> <p>Absent this clarification, there was concern expressed that golf course nutrient management plans, absent a reading of the Code of Virginia, could be limited to being good for only three years.</p>