



**ANNUAL REPORT ON THE  
STATUS OF REGULATIONS AND THE  
IMPLEMENTATION OF A PROGRAM TO  
CERTIFY INDIVIDUALS WHO APPLY  
FERTILIZER TO NONAGRICULTURAL LAND**

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**July 1, 2009**

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Annual Report on the Status of Regulations and the Implementation of a Program to Certify Individuals who Apply Fertilizer to Nonagricultural Land

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**Enabling Authority**

Chapter 686 of the 2008 Acts of Assembly

**EXECUTIVE SUMMARY**

This document is submitted pursuant to Chapter 686 of the 2008 Acts of Assembly which requires the Commissioner of Agriculture and Consumer Services to report to the Chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources on the status of regulations to certify the competence of contractor applicators and licensees who apply fertilizer to nonagricultural lands, and the implementation of a program pursuant to those regulations. This document is to be submitted each succeeding year until the regulations have been adopted and the program has been implemented.

## **LEGISLATIVE MANDATE**

This document complies with the enactment provisions of Chapter 686 of the 2008 Acts of Assembly which require the Commissioner of Agriculture and Consumer Services (Commissioner) to report to the Chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources on the status of regulations to certify the competence of contractor applicators and licensees who apply fertilizer to nonagricultural lands, and the implementation of a program pursuant to those regulations.

### **I. BACKGROUND**

The Virginia Department of Agriculture and Consumer Services (VDACS) administers the provisions of Chapter 36 of Title 3.2 of the Code of Virginia regarding fertilizers. Historically, VDACS' involvement with fertilizer issues has involved truth-in-labeling, registration of products, licensing of distributors and manufacturers, permitting of contractor-applicators, and the tracking of statewide volume of sales through the compilation of tonnage reports.

During the 2008 session, the Virginia General Assembly considered and subsequently approved Senate Bill 135 (Stuart), which sought to address the growing concern over off-target applications of fertilizer on impervious surfaces that result primarily from lawn care activities. The bill, which Governor Kaine signed into law, required the Board of Agriculture and Consumer Services (Board), in consultation with a technical advisory committee of stakeholders, to adopt regulations prescribing training and application requirements for fertilizer contractor-applicators and licensees who apply regulated product on nonagricultural property. The bill provided that the resulting nutrient management training and certification program must comport to guidelines promulgated by the Department of Conservation and Recreation (DCR). The bill also authorized the Board to impose civil penalties of up to \$250 for violations, and stipulated that compliance would be required within 12 months of the effective date of the regulation.

On August 19, 2008, during a meeting of the Board in Suffolk, Virginia, VDACS staff briefed the members of the Board on the provisions of SB 135 and requested approval to initiate action to promulgate 2 VAC 5- 425, the new fertilizer regulation. The Board authorized VDACS staff to proceed with issuing a Notice of Intended Regulatory Action (NOIRA), which was published in the November 10, 2008 issue of the *Virginia Register of Regulations*. The deadline for public comments was December 10, 2008. No public comments were received.

### **II. TECHNICAL ADVISORY COMMITTEE (TAC)**

At the August 19, 2008 meeting, the Board also approved the creation of a technical advisory committee (TAC) of stakeholders that included representatives from the following organizations and agencies:

- Virginia Agribusiness Council
- Virginia Farm Bureau Federation  
Virginia Cooperative Extension
- Virginia Crop Production Association
- Virginia Golf Course Superintendents Association
- Virginia Green Industry Council
- Virginia Nursery & Landscape Association
- Virginia Turfgrass Council

A representative from DCR serves in an advisory capacity to the TAC. The Board also authorized the Commissioner to add other organizations and individuals to the TAC as he deemed appropriate during the regulation making process but no other member has been added.

### **III. TAC MEETINGS AND STATUS OF REGULATIONS**

The TAC has met four times since its establishment. All meetings have taken place at VDACS central offices in Richmond. During the first meeting on November 10, 2008, Commissioner Haymore provided background on SB 135, discussed the development of a work plan for drafting regulations, and facilitated discussion of issues and concerns among the TAC members. VDACS staff then developed a draft regulation which TAC members have discussed and further refined at each of three subsequent meetings. Those meetings took place on December 19, 2008, March 30, 2009, and May 19, 2009, respectively.

The next meeting of the TAC is scheduled for October 16, 2009. It is expected that the TAC will endorse the final text of the proposed regulation at that meeting. Following agreement on the final text, VDACS staff will then seek the Board's authorization to file the proposed regulation and solicit public comments. The next meeting of the Board will be in December 2009, in Richmond, but a specific date and time for this meeting has not yet been established. It should be noted that this regulatory action is subject to the provisions of article 2 of the *Administrative Process Act* and the standard executive branch review process. Consequently, this regulatory action may take 18 to 24 months to complete once the proposed regulation is filed.

## **GLOSSARY**

"Contractor-applicator" means any person required to hold a permit to distribute or apply any regulated product pursuant to § [3.2-3608](#).

"Licensee" means the person who receives a license to distribute any regulated product under the provisions of this chapter.

"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in any way alters the chemical or physical characteristics of any regulated product.