



**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, 2012

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PUBLICATION YEAR 2012

Document Title

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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Commissioner of Agriculture and Consumer Services

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, 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 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 lands. 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 regulations.

II. TECHNICAL ADVISORY COMMITTEE (TAC)

The technical advisory committee of stakeholders that assisted in the drafting of the proposed regulations 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 served in an advisory capacity to the TAC.

The TAC met five times. Those meetings took place on November 10 and December 19, 2008, and on March 30, May 19, and October 16, 2009. The TAC endorsed the final text of the proposed regulations on October 16, 2009.

III. STATUS OF REGULATIONS

On August 19, 2008, the Board authorized VDACS staff to initiate action to promulgate 2VAC5-405 *et seq.*, the new fertilizer regulations. A Notice of Intended Regulatory Action 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.

On March 25, 2010, the Board authorized VDACS staff to file and publish the proposed regulations for public review and comment. The proposed regulations were published in January 31, 2011 issue of *The Virginia Register of Regulations*. The deadline for public comments was April 1, 2011. Three comments germane to the proposed regulations were received.

On May 26, 2011, the Board authorized VDACS staff to take any and all actions necessary to make these regulations final. The final regulations were published in *The Virginia Register of Regulations* on September 12, 2011. No comments were received during the final adoption period and the regulations became effective on October 12, 2011.

During the 2011 session, the Virginia General Assembly considered and subsequently approved HB 1831 and SB 1055 which amended the fertilizer statute and necessitated further changes to the regulations. The amendments clarified that the regulations adopted pursuant to § 3.2-3602.1 also apply to government employees, and prescribed certain reporting requirements for any person subject to the regulations.

On December 8, 2011, the Board adopted the amendments to 2VAC5-405 *et seq.* that were necessary to incorporate these new requirements mandated by Chapters 341 and 353 of the 2011 Acts of Assembly. The Board also authorized staff use the exempt regulatory process to effect these amendments. The final, amended regulations were published in *The Virginia Register of Regulations* on January 2, 2012 and became effective on February 1, 2012. Pursuant to § 3.2-3602.1(E) of the *Code of Virginia*, any person subject to 2VAC5-405 *et seq.* shall comply with the regulations within 12 months of the effective date of the regulations, or by February 1, 2013.

IV. IMPLEMENTATION OF THE PROGRAM

In April 2012, VDACS, in cooperation with Virginia Polytechnic Institute and State University (Virginia Tech) and DCR, agreed to pursue the development of an online training and testing program to certify fertilizer applicators. Virginia Tech, in consultation with VDACS and DCR, is

developing training modules and exam questions that will cover the general knowledge requirements for certified fertilizer applicators that are prescribed in the regulations.

Pursuant to 2VAC5-405-20 A, the Commissioner is authorized to approve, on behalf of the Board, all courses of training required by the regulations. As of July 1, 2012, the Board has not received any proposed courses of training for approval.

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.