



SPONSOR: Sen. Huxtable & Rep. Phillips
Sens. Hansen, Hoffner; Reps. K. Johnson, Morrison

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 318

AN ACT TO AMEND TITLE 3, CHAPTER 22 OF THE DELAWARE CODE RELATING TO THE DELAWARE NUTRIENT MANAGEMENT COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 22, Subchapter I, Title 3 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 § 2201. Declaration of purpose.

4 The purposes of this chapter are:

5 (1) To regulate those activities involving the generation and application of nutrients in order to help improve and
6 maintain the quality of Delaware's ground and surface waters and to meet or exceed federally mandated water quality
7 standards, in the interest of the overall public ~~welfare~~; welfare.

8 (2) To establish a certification program that encourages the implementation of best management practices in the
9 generation, handling or land application of nutrients in ~~Delaware~~; Delaware.

10 (3) To establish a nutrient management planning ~~program~~; program.

11 (4) To formulate a systematic and economically viable nutrient management program that will both maintain
12 agricultural profitability and improve water quality in Delaware.

13 (5) To regulate the composition and application of nutrients to turf.

14 § 2202. Definitions.

15 For the purposes of this chapter:

16 (22) "Turf" means residential, commercial, and publicly owned land that is planted in closely mowed and
17 managed grass. Turf does not include athletic fields, golf courses, or land used in the production for sale of sod or seed.

18 Section 2. Amend Chapter 22, Subchapter II, Title 3, of the Delaware Code by making deletions as shown by
19 strike through and insertions as shown by underline as follows:

20 § 2222. Composition; appointment; qualifications and term; compensation; vacancies; civil liability.

21 (a) The Delaware Nutrient Management Commission consists of 19 members as follows:

22 (1) Five members appointed by the Governor, 1 each representing the following categories, with at least 1
23 from each county:

24 a. A dairy, swine, beef, or small ruminant farmer.

25 b. An equine operation owner.

26 c. A poultry farmer.

27 d. A grain row crop farmer.

28 e. A vegetable row crop farmer.

29 (2) Three members appointed by the Governor, 1 each representing the following categories:

30 a. A representative of a commercial/agriculture nutrient applicator.

31 b. A representative of a golf course/lawn care industry.

32 c. A public citizen that does not represent any of the other categories.

33 (3) Two members appointed by the President Pro Tempore of the Senate, representing each of following
34 categories:

35 a. A representative of a community-based environmental advocacy group.

36 b. A poultry farmer.

37 (4) Two members appointed by the Speaker of the House, representing each of following categories:

38 a. A representative of a community-based environmental advocacy group.

39 b. A dairy, swine, beef, or small ruminant farmer.

40 (5) One member who is a nutrient consultant appointed by the Senate Minority Leader.

41 (6) One member who is a representative of the commercial nursery industry appointed by the House
42 Minority Leader.

43 (7) The Director of the Division of Watershed Stewardship of DNREC, or the Director's designee.

44 (8) Four ex officio nonvoting members, or their designee:

45 a. The Secretary of the Department of Agriculture.

46 b. The Secretary of the Department of Natural Resources and Environmental Control (DNREC).

47 c. The Secretary of the Department of Health and Social ~~Seervices~~ Services.

48 d. The Nutrient Management Program Administrator.

49 (b) The Commission members shall elect a chairperson and vice chairperson from the appointed members of the

50 Commission. ~~The chairperson must be a member appointed under paragraph (a)(1) of this section.~~ Each officer shall serve

51 for 4 years and may not serve more than 2 consecutive terms. In the event of a vacancy in 1 of the offices, a replacement
52 must be elected within 60 days.

53 Section 3. Amend Chapter 22, Subchapter III, Title 3 of the Delaware Code by making deletions as shown by
54 strike through and insertions as shown by underline as follows and by redesignating accordingly:

55 § 2241. Requirement for certification; classifications.

56 (a) Beginning January 1, 2004, all persons who conduct the following activities shall be duly certified by the
57 Commission in accordance with Commission regulations or shall utilize a duly certified person or firm:

58 (1) Operate any animal feeding operation ~~in excess of~~ totaling more than 8 animal ~~units;~~ units.

59 (2) Apply nutrients to lands ~~in excess of~~ totaling more than 10 acres or ~~waters~~ as a component of a
60 commercial venture or lands that he or she owns, leases or otherwise ~~controls;~~ controls.

61 (3) Apply nutrients to turf totaling more than ¼ acre (10, 890 square feet) as a component of a
62 commercial venture managed for another.

63 ~~(3)~~ (4) Advise or consult with persons required by this chapter to be certified by the Commission.

64 (b) The Commission shall establish by regulation the following classifications for certification of nutrient handlers
65 for use in the SNMP:

66 (1) Nutrient generator: a person within the State who operates a facility that produces organic or
67 inorganic ~~nutrients;~~ nutrients.

68 (2) Private nutrient handler: A person in this State who applies organic or inorganic nutrients to ~~lands or~~
69 ~~waters~~ turf or land he or she owns, leases, or otherwise ~~controls;~~ controls.

70 (3) Commercial nutrient handler: A person in this State who applies, uses, or supervises the application of
71 organic or inorganic nutrients to ~~lands or waters~~ turf or land as a component of a commercial or agricultural
72 business in exchange for a fee or service ~~charge;~~ charge.

73 (4) Nutrient consultant: A person in this State who is engaged in the activities of advising or consulting
74 regarding the formulation, application or scheduling of organic or inorganic nutrients within the State.

75 (c) The Commission may subclassify any certificates described in subsection (b) of this section as necessary.

76 Separate subclassifications may be specified as to the method used by nutrient handlers to apply nutrients, the use of
77 specific quantities or types of nutrients, or any other identifiable characteristics of nutrient management the Commission
78 deems necessary.

79 (d) These certification requirements shall not apply to individuals who are performing nutrient application services
80 under the direct supervision of a certified person as a private or commercial nutrient handler.

81 (1) Direct supervision shall apply only to individuals who are responsible for professional duties at the
82 same physical location as the commercial nutrient handler.

83 § 2247. Nutrient management plans.

84 (a) All animal feeding operations with greater than 8 animal units or any person who owns, leases or otherwise
85 controls property ~~in excess of~~ totaling more than 10 acres upon which nutrients are applied shall develop and implement a
86 nutrient management plan in accordance with the schedule outlined in this section. Nutrient handlers who apply nutrients
87 to turf totaling more than ¼ acres (10,890 sq ft) but less than 10 acres shall not be required to have a nutrient management
88 plan but are subject to limits outlined in this Title and the Commission's regulations. All nutrient management plans shall
89 include all of the following:

90 (1) Field maps as an arial photograph showing field identification, boundaries, acres, location of surface
91 waters, irrigation systems, and location of designated sensitive areas with associated nutrient application
92 restrictions or setbacks.

93 (2) Soil maps and information, including drainage class, permeability, available water capacity, depth to
94 water table, and flooding or ponding frequency.

95 (3) Current or planned crop rotations.

96 (4) Results of applicable soil, plant, water, manure, or organic by-products analyses.

97 (5) Realistic yield goals and the methods used to estimate those goals. Expected yields shall be calculated
98 as a mathematical average of the best 4 out of 7 year data or, in the absence thereof, best professional judgement
99 by a certified nutrient consultant under § 2241 of this title.

100 (6) Recommended nutrient rates, timing, form and methods of nutrient applications and incorporation.

101 (7) Results of approved risk assessment tools for nitrogen, phosphorus, and erosion losses, if applicable.

102 (8) Animal information including types, number, average sizes, annual manure generation, and any
103 manure import or export, if applicable.

104 § 2250 Composition and application of nutrients applied to turf.

105 (a) Turf nutrients must be applied in compliance with this Chapter and the Nutrient Management Commission's
106 Regulations.

107 (b) No more than 4.8 pounds of nitrogen per 1,000 square feet of turf may be applied per year unless specified in a
108 nutrient management plan.

109 (c) Single application limits shall be set forth in the regulations.

- 110 (d) Nutrients with phosphorous may not be applied to turf unless a soil test from an approved lab is performed to
111 confirm a phosphate deficiency or it is being used to establish, re-establish, or repair a turf area.
- 112 (e) The Commission may publish a list of approved commercial nutrient handlers certified to apply
113 nutrients to turf.

SYNOPSIS

This bill enables the Delaware Nutrient Management Commission to regulate the application of nutrients to turf by commercial nutrient handlers. The law excludes athletic fields, golf courses, and land used in the production for sale of sod or seed and only applies to commercial nutrient handlers who are paid to apply such nutrients. This bill decreases the threshold of serviced acreage for which commercial nutrient handlers would need a certification to apply nutrients to turf. Allowing the Commission to oversee such conduct will further ensure that Delaware's waterways are continually improved and maintained to meet or exceed federally mandated water quality standards, in the interest of the overall public welfare.

Section 1 of the bill grants the Commission the authority to regulate the application of nutrients to turf and defines turf.

Section 2 of the bill broadens the Commission's pool of potential officers to any appointed member not just the five appointed by the Governor.

Section 3 of the bill provides greater detail as to whom the Commission regulates regarding turf and when, as well as setting forth constraints as to when and how certain nutrients can be applied. The commission will reduce the threshold for regulated commercial nutrient handlers from 10 acres of service area to $\frac{1}{4}$ acre (10,890 sq ft). The definition of commercial nutrient handler is expanded. The requirement of a nutrient management plan is eliminated for areas falling within these newly established constraints.

This bill also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Huxtable