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HOUSE BILL NO. 1307

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture
on February 10, 2000)

(Patron Prior to Substitute—Delegate Orrock)

*A BILL to amend and reenact §§ 10.1-559.1, 10.1-559.3, 10.1-559.4, and 10.1-559.5 of the Code of Virginia, relating to the Agricultural Stewardship Act.***Be it enacted by the General Assembly of Virginia:****1. That §§ 10.1-559.1, 10.1-559.3, 10.1-559.4, and 10.1-559.5 of the Code of Virginia are amended and reenacted as follows:**

§ 10.1-559.1. Definitions.

As used in this article, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including, but not limited to, farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with § 9-6.14:11.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land on which an agricultural activity occurs.

"Person" means an individual, a partnership, an association, a corporation or any government or unit of government.

"Pollution" means any alteration of the physical, chemical or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" or *"measures"* means measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution which reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods or other alternatives. "Stewardship measures" or *"measures"* includes (i) agricultural water quality protection management measures described in the Virginia Agricultural Best Management Practices Manual and (ii) agricultural water quality protection management measures contained in the United States Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

§ 10.1-559.3. Complaint; investigation; agricultural stewardship plan.

A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district in which the land lies determine the validity of the information within twenty-one days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.

B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.

C. If, after investigating a complaint, ~~the district or~~ the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances which could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district in which the agricultural activity is located. The notice shall state that, within sixty days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan which includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within thirty days *after he receives it. Upon approving the owner's or operator's*

60 *plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been*
61 *approved. The owner or operator shall begin implementing the approved agricultural stewardship plan*
62 *within six months of the date on which he the owner or operator received the notice that the*
63 *agricultural activity is creating or will create pollution.*

64 D. The plan shall include an implementation schedule, and implementation of the plan shall be
65 *completed within a period specified by the Commissioner, based upon the seasons and other temporal*
66 *considerations so that the period is that during which the possibility of success in establishment or*
67 *construction of the measures required in the plan is the greatest, which shall not later than exceed*
68 *eighteen months after from receipt of notice. However, the Commissioner may grant an extension of up*
69 *to 180 days if (i) a hardship exists and (ii) the request for an extension was made not later than sixty*
70 *days before the scheduled completion date. The Commissioner shall, within thirty days of receiving the*
71 *request, inform the owner or operator whether or not an extension has been granted.*

72 E. *After implementing the approved plan according to the provisions of the chapter, the owner or*
73 *operator shall maintain the stewardship measures established pursuant to the plan. The owner or*
74 *operator may change the agricultural activity so long as the Commissioner is notified.*

75 F. If the Commissioner determines that substantial evidence does not exist to prove that an
76 agricultural activity is creating or will create pollution or that any pollution was caused by unusual
77 weather events or other exceptional circumstances or that the pollution is not a threat to human health,
78 animal health or aquatic life or recreational or other beneficial uses, he shall inform the complainant and
79 the owner or operator of his determination. Upon approving the owner's or operator's agricultural
80 stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan
81 has been approved.

82 § 10.1-559.4. Issuance of corrective orders.

83 A. If any owner or operator who has been issued a notice under § 10.1-559.3 fails to *submit an*
84 *agricultural stewardship plan, begin actively implementing an approved agricultural stewardship the plan*
85 *within six months of receiving the notice, complete implementation of the plan, or maintain the*
86 *stewardship measures as provided in § 10.1-559.3, the Commissioner shall issue a corrective order to*
87 *such owner or operator. The order shall require the owner or operator to complete implementation of*
88 *specified stewardship measures within a stated period of time, not to exceed eighteen months from the*
89 *date on which he received the notice under subsection C of § 10.1-559.3 that such activity be*
90 *accomplished within a stated period of time.*

91 B. A corrective order issued pursuant to subsection A shall be issued only after a ~~hearing an~~
92 *informal fact-finding conference*, with reasonable notice being given to the owner or operator, or both,
93 of the time, place and purpose thereof, and shall become effective not less than five days after date of
94 delivery to the last known address as provided in subsection C. The corrective order shall be suspended
95 pending appeal by the recipient made within five days after delivery of such order to the last known
96 address of the owner or operator.

97 C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt
98 requested, sent to the last known address of the owner or operator, or by personal delivery by an agent
99 of the Commonwealth.

100 D. Notwithstanding other provisions of this article, if the Commissioner determines *that a recurring*
101 *polluting condition which is the subject of an approved plan is occurring or* that an emergency
102 condition exists due to runoff from an agricultural activity which is causing or is likely to cause an
103 imminent or substantial danger to (i) the public health, safety or welfare or to the health of animals, fish
104 or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or
105 other beneficial uses, the Commissioner may issue, without advance notice, *informal fact-finding*
106 *conference or hearing, an emergency corrective order. Such order may direct the owner or operator of*
107 *the agricultural activity, or both, to cease immediately all or part of the agricultural activity, and to*
108 *implement specified stewardship measures or any necessary emergency measures within a stated period*
109 *of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the*
110 *opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time*
111 *and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending or*
112 *canceling the emergency corrective order.*

113 E. The Commissioner shall not issue a corrective order to any land owner or operator if the person
114 is:

115 1. Actively implementing the agricultural stewardship plan which has been reviewed by the district in
116 which the agricultural activity is located and approved by the Commissioner, or

117 2. Actively implementing stewardship measures that have failed to prevent pollution, if the
118 Commissioner determines that the pollution is a direct result of unusual weather events or other
119 exceptional circumstances which could not have been reasonably anticipated.

120 § 10.1-559.5. Right of entry; court enforcement.

121 A. The district or the Commissioner *or his designee* may enter land which is the subject of a

complaint, after notice to the owner or operator, to determine whether the agricultural activity is causing or will cause pollution of state waters.

B. Upon failure of any owner or operator to *allow the Commissioner or his designee entry in accordance with subsection A, to implement stewardship measures in the time specified in a corrective order, or to maintain stewardship measures in accordance with subsection E of § 10.1-559.3*, the Commissioner may present to the circuit court of the county or city in which the land is located, a petition asking the court to require the owner or operator to *allow the Commissioner or his designee entry or to carry out such measures within a specified time*. If the owner or operator fails to implement the stewardship measures specified in the court order, the Commissioner or his representative may enter the land involved and implement the measures. The Commissioner shall have the authority to recover the costs of implementing the stewardship measures from the owner or operator.