

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 773

An Act to amend the Code of Virginia by adding in Chapter 5 of Title 10.1 an article numbered 3.1, consisting of sections numbered 10.1-559.1 through 10.1-559.11, creating the Agricultural Stewardship Act.

[H 1329]

Approved April 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 5 of Title 10.1 an article numbered 3.1, consisting of sections numbered 10.1-559.1 through 10.1-559.11, as follows:

Article 3.1.

Agricultural Stewardship Act.

§ 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.

"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" 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" 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.

§ 10.1-559.2. Exclusions from article.

This article shall not apply to any agricultural activity to which (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of this title or (ii) a permit issued by the State Water Control Board, applies.

§ 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. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date on which he received the notice.

D. The plan shall include an implementation schedule, and implementation of the plan shall be completed not later than eighteen months after receipt of notice. However, the Commissioner may grant an extension of up to 180 days if (i) a hardship exists and (ii) the request for an extension was made not later than sixty days before the scheduled completion date. The Commissioner shall, within thirty days of receiving the request, inform the owner or operator whether or not an extension has been granted.

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

§ 10.1-559.4. Issuance of corrective orders.

A. If any owner or operator who has been issued a notice under § 10.1-559.3 fails to begin actively implementing an approved agricultural stewardship plan within six months of receiving the notice, the Commissioner shall issue a corrective order to such owner or operator. The order shall require the owner or operator to complete implementation of specified stewardship measures within a stated period of time, not to exceed eighteen months from the date on which he received the notice under subsection C of § 10.1-559.3.

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

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

D. Notwithstanding other provisions of this article, if the Commissioner determines that an emergency condition exists due to runoff from an agricultural activity which is causing or is likely to cause an imminent or substantial danger to (i) the public health, safety or welfare or to the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other beneficial uses, the Commissioner may issue, without advance notice or hearing, an emergency corrective order. Such order may direct the owner or operator of the agricultural activity, or both, to cease immediately all or part of the agricultural activity, and to implement specified stewardship measures or any necessary emergency measures within a stated period of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the opportunity for a hearing, after reasonable notice as to the time and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending or canceling the emergency corrective order.

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

1. Actively implementing the agricultural stewardship plan which has been reviewed by the district in which the agricultural activity is located and approved by the Commissioner, or
2. Actively implementing stewardship measures that have failed to prevent pollution, if 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.

§ 10.1-559.5. Right of entry.

A. The district or the Commissioner 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 implement stewardship measures in the time specified in a corrective order, 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 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.

§ 10.1-559.6. Appeal.

Decisions of the Commissioner may be appealed by persons aggrieved to the Virginia Soil and Water

Conservation Board and thereafter to the circuit court in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

§ 10.1-559.7. Penalties; injunctions; enforcement actions.

A. Any person violating § 10.1-559.4 or § 10.1-559.5 shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner or Board. Each day the violation continues shall constitute a separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, factors to be considered shall include but not be limited to the willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this article.

§ 10.1-559.8. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record.

§ 10.1-559.9. Guidelines to be published by Commissioner; report.

A. In consultation with the districts, the Department and interested persons, the Commissioner shall develop guidelines for the implementation of this article. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within ninety days of the effective date of this section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for publication in the Virginia Register of Regulations. At least thirty days shall be provided for public comment after the publication of the proposed guidelines. After the close of the public comment period, the Commissioner shall consider the comments that he has received and may incorporate any changes into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall submit final guidelines for publication in the Register. The guidelines shall become effective on April 1, 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been published in the Register and a public comment period has been provided.

B. The Commissioner shall compile a report by August 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties which may have been assessed. The Commissioner shall have the discretion to exclude and keep confidential specific information regarding ongoing investigations. The Commissioner shall (i) provide the report to the Board, the Department and to every district, (ii) publish notice in the Virginia Register that the report is available, and (iii) make the report available to the public upon request.

§ 10.1-559.10. Local ordinances.

A. Any county, city or town may adopt an ordinance creating a complaint, investigation and agricultural stewardship plan development program. Ordinances adopted pursuant to this section may contain only provisions which parallel §§ 10.1-559.2 and 10.1-559.3. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in § 10.1-559.3.

B. This section shall not apply to any ordinance (i) in existence on July 1, 1996, or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

§ 10.1-559.11. Construction of article.

Nothing in this article shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act.