Stultz, Mark

From: Carol Teigen [cteigen@stoneridgeinc.org]
Sent: Thursday, November 18, 2010 9:57 AM
To: Stultz, Mark
Subject: HB329 - Fertilizer
Attachments: HB329 Fertilizer - Plum 2011.pdf

Mark,

My understanding is HB329 (attached) is being reintroduced by Delegate Plum in the 2011 legislative session. If passed by the General Assembly, this will have a significant impact on water quality improvements for Loudoun County as well as the Chesapeake Bay with the regulation of phosphorus fertilizer products.

The Stone Ridge Association landscape contractor stopped the use of phosphorus in 2009 and I suspect other associations have done the same. As you notice, the bill focus is that stores cannot place phosphorus fertilizer on the shelves for public view; however, the store can have the phosphorus products in the back and sell if an individual specifically requests such a product. This is rather ingenious since I suspect most homeowners do not know enough about fertilizer to specifically request a phosphorus product; they simply go to Lowes and buy what they see on the shelf.

After reading Sally Mann's email referencing fertilizer, I thought I would forward this to you for your review. If I understand the bill as currently written, it attempts to regulate the use of phosphorus on lawns – not agricultural use. However, this bill may eliminate the concern about urban landowners over fertilizing.

Have a great day!

Carol Teigen, PCAM
General Manager

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2011 SESSION

INTRODUCED

10101386D

HOUSE BILL NO. 329

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact § 10.1-104 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5, relating to lawn fertilizer containing phosphorus; penalty.

Patron—Plum

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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Be it enacted by the General Assembly of Virginia:

1. That § 10.1-104 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.5 as follows:

§ 10.1-104. Powers of the Department.

A. The Department shall have the following powers, which may be delegated by the Director:

1. To employ such personnel as may be required to carry out those duties conferred by law;

2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, including but not limited to contracts with private nonprofit organizations, the United States, other state agencies and political subdivisions of the Commonwealth;

3. To accept bequests and gifts of real and personal property as well as endowments, funds, and grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;

4. To prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law;

5. To establish noncompetitively procured contracts, notwithstanding the Virginia Public Procurement Act (§ 2.2-4300 et seq.), with private nonprofit organizations that are exempt from federal taxation, to conduct revenue producing activities on Department lands provided the revenue generated after expenses is used to benefit Virginia State Parks and the Natural Area Preserve System. This subsection shall not provide for establishing contracts for capital improvements to state-owned facilities or on Department lands;

6. To perform acts necessary or convenient to carry out the duties conferred by law; and

7. To assess civil penalties for violations of §§ 10.1-200.3 *and 10.1-104.5.*

B. Pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), the Department may promulgate regulations necessary to carry out the purposes and provisions of this subtitle. A violation of any regulation shall constitute a Class 1 misdemeanor, unless a different penalty is prescribed by the Code of Virginia. However, a violation of the Virginia State Park Regulations (4VAC5-30-10 et seq.) shall constitute a Class 3 misdemeanor.

§ 10.1-104.5. Use and application of lawn fertilizers; exemptions; penalty.

A. As used in this section, unless the context requires a different meaning:

"Fertilizer" means any substance containing one or more recognized plant nutrients, which is used for its plant nutrient, and which is designed for use, or claimed to have value, in promoting plant growth.

"Lawn fertilizer" means any fertilizer, whether distributed by a property owner, renter, commercial entity, or locality, distributed for nonagricultural use such as lawns, golf courses, parks, and cemeteries. Lawn fertilizer does not include fertilizer products intended primarily for gardening, tree, shrub, and indoor plant application.

B. Except as provided in subsection C, no person shall:

1. Apply on any lawn fertilizer that is labeled as containing more than zero percent phosphorus or other compound containing phosphorus, such as phosphate;

2. Apply lawn fertilizer when the ground is frozen; or

3. Cause fertilizer to be applied to or run onto any impervious surface, including parking lots, roadways, and sidewalks. If such application occurs, the fertilizer shall be immediately contained and collected, and either legally applied to turf or placed in an appropriate container.

C. The prohibition against the use of fertilizer under subsection B shall not apply to the following:

1. Newly established turf or lawn areas during their first growing season;

2. Turf or lawn area where soil tests performed within the past three years confirm that the

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phosphorus levels indicate the need for phosphorus fertilizer applications based upon the Department of Conservation and Recreation's nutrient management standards and criteria established pursuant to § 10.1-104.2. The fertilizer application shall not contain an amount of phosphorus exceeding the amount and rate of application based on the soil test;

3. Gardens, including vegetable and flower, trees, and shrubs, and indoor applications, including greenhouses; or

4. Yard waste compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

However, the application of fertilizers under this subsection shall meet the nutrient management standards and criteria of the Department of Conservation and Recreation pursuant to § 10.1-104.2.

D. Effective January 1, 2011, no person shall display for sale any lawn fertilizer that is labeled as containing more than zero percent phosphorus or other compound containing phosphorus, such as phosphate. Lawn fertilizer that contains more than zero percent phosphorus may be stored off the sales floor and may be sold upon request. The business shall advise customers by signs that fertilizer containing phosphorus is available by request.

E. Effective January 1, 2011, a sign referencing the requirements of this section and the effects of phosphorus on state waters and the Chesapeake Bay shall be prominently displayed where fertilizers are sold. A business shall be deemed to have complied with this requirement by displaying a sign consistent with a sample sign that the Department shall design and make available.

F. Any person who violates any provision of this section may be assessed a civil penalty by the Department not to exceed $250. All civil penalties assessed under this section shall be deposited in the Water Quality Improvement Fund established by § 10.1-2128.