

**DEPARTMENT OF AGRICULTURE
DELAWARE NUTRIENT MANAGEMENT COMMISSION**

Statutory Authority: 3 Delaware Code, Sections 2201(5), 2220(a), and 2250(a) (3 **Del.C.** §§2201(5), 2220(a), and 2250(a))

FINAL

ORDER

1204 Nutrient Management Turf Specific Regulations

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Delaware Nutrient Management Commission, pursuant to 3 **Del.C.** §§ 2201(5) and 2220(a), proposed to adopt regulation 3 **DE Admin. Code** 1204 Nutrient Management Turf Specific Regulations to regulate the application of nutrients to turf, including home and commercial lawns, over ¼ acre in size. The proposed regulations exclude athletic fields, golf courses, residential lots less than ¼ acre in size, 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.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2025. The Commission received two written public comments. On March 26, 2025, Richard Thurman, the President of AC Plant & Turf submitted a letter to the Board objecting to section 6.0, which limits the application of nitrogen to one pound per 1,000 square feet. Mr. Thurman noted that enhanced efficiency fertilizers allow for applications of high amounts of nitrogen while "reducing runoff, leaching, and volatilization." Mr. Thurman suggested the Commission adopt an exemption to the limit based on the release rate of nitrogen of enhanced efficiency fertilizers. In addition, Jack Harrell III, President of Harrell's, LLC submitted written comment specifically objecting to subsections 6.1.1.1 and 6.1.1.2 pertaining to nitrogen application limits when enhanced efficiency fertilizers are utilized. Mr. Harrell explained the technology associated with POLYON, a product exclusively manufactured by Harrell's, and noted that the one pound per 1,000 square feet rate "limits the use of modern technology." Mr. Harrell suggested the Board amend the proposed subsections to state, "[n]itrogen release from an enhanced efficiency fertilizer source such as controlled release nitrogen products, cannot exceed a cumulative 1 lb. N per 1000 sq. ft. throughout any consecutive 4-week period following application."

**II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS
EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE**

The Nutrient Management Commission has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that if promulgated, the regulation would have a neutral or positive impact on the State's resiliency to climate change because compliance with the regulation would not reasonably involve the increase in greenhouse gas emissions.

III. FINDINGS OF FACTS

On April 1, 2025, the Nutrient Management Commission considered the written submittals. The Commission noted that most of the fertilizers being used on turf are enhanced efficiency fertilizers, which use technology similar to that referred to in Mr. Harrell's public comment. The Commission researched other states' rates and involved stakeholders in the process of developing this regulation. Over the course of approximately a year, the committee, including Commission members who represent the golf course/lawn care industry, a community-based environmental advocacy group representative, and the commercial nursery industry did not receive any negative feedback as to the proposed rates. The regulation was developed to mirror that of neighboring state Maryland, as Maryland has had a successful turf regulation program for many years. The Committee also noted that under Subsection 6.1, anyone who seeks to apply nitrogen or phosphorous outside of the limits or restrictions set forth therein, may submit a nutrient management plan in order to do so. If such rates of application are borne out by the data, a nutrient management plan would reflect that and allow for such application. Finally, the Commission addressed the environmental argument within the public comments. The Commission noted that this regulation is slightly less stringent than Maryland's and that it is not environmentally sound to apply such high rates of nitrogen in the inland bay areas, regardless of whether enhanced efficiency fertilizers are used. If the one pound per 1,000 square feet limit were loosened, it would undercut the purpose of the new law and purpose of the Commission. 3 *Del. C.* §§ 2201 and 2220. As such, the Commission voted to approve and adopt 3 **DE Admin. Code** 1204 Nutrient Management Turf Specific Regulations.

IV. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Commission concludes that it is appropriate to adopt 3 **DE Admin. Code** 1204 Nutrient Management Turf Specific Regulations. Therefore, pursuant to 3 **Del.C.** §§ 2201(5) 2220(a), 3 **DE Admin. Code** 1204

Nutrient Management Turf Specific Regulations, attached hereto as Exhibit A, are hereby adopted.

V. TEXT AND CITATION

The text of **3 DE Admin. Code** 1204 Nutrient Management Turf Specific Regulations adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as **3 DE Admin. Code** 1204 Nutrient Management Turf Specific Regulations in the *Administrative Code of Regulations* for the Department.

VI. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 1st day of April 2025.

Delaware Nutrient Management Commission

| | |
|--|---------------------|
| /s/ F. Kenneth Blessing, Jr., Chairman | /s/ Tak Keen |
| /s/ Mark Adkins | /s/ Alan Bailey |
| /s/ Kenneth Horeis | /s/ Tyler Brown |
| /s/ Anna Fagan | /s/ N. Wayne Hudson |
| /s/ Jon Nichols, Jr. | /s/ Garry Killmon |
| /s/ Francis J. O'Neill, III | |

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

1204 Nutrient Management Turf Specific Regulations

1.0 PREAMBLE

This regulation has been developed pursuant to 3 Del.C. Ch. 22. That statute established the Delaware Nutrient Management Commission and authorized the Commission to develop, review, approve, and enforce nutrient management regulations, including regulations governing the application of nutrients to turf. This regulation was developed by the Commission and the Delaware Department of Agriculture. It is adopted with the guidance, advice, and consent of the Commission.

2.0 Authority

This regulation is promulgated pursuant to the authority provided by 3 Del.C. §§2201(5), 2220(a), and 2250(a).

3.0 Purpose

The purpose of this regulation is to establish requirements for nutrient applications, record keeping, and enforcement pertaining to turf pursuant to 3 Del.C. §2250.

4.0 Definitions

For purposes of this regulation, the following words or terms shall have the following meaning:

"Applying", or any derivation of the word "apply", as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic or inorganic nutrients.

"Certification" means the recognition by the Commission that a person has met the qualification standards established by the Commission and has been issued a written certificate authorizing such person to perform certain functions specified in this regulation.

"Commercial nutrient handler" means a person in this State who applies, uses, or supervises the application of organic or inorganic nutrients to turf or land as a component of a commercial or agricultural business in exchange for a fee or service charge.

"Commission" or "DNMC" means the Delaware Nutrient Management Commission.

"Enhanced efficiency fertilizer" means a fertilizer product that increases plant uptake and decreases the potential of nutrient loss to the environment, including gaseous loss, leaching, or runoff, when compared to an appropriate reference fertilizer product.

"Person" means any individual, partnership, association, fiduciary, or corporation or any organized group of persons, whether incorporated or not.

"State Nutrient Management Program" or "SNMP" means all the nutrient management program elements developed by the Commission, whether or not reduced to rules or regulations.

"Turf" means residential, commercial, and publicly owned lands planted in closely mowed and managed grass. Turf does not include athletic fields, golf courses, residential lots less than 1/4 acre (10,890 square feet) in size, or land used in the production for sale of sod or seed.

"Waterways" means all tidal waters (up to the mean high water line) as well as all non-tidal rivers, streams, lakes, ponds, bays, and inlets (up to the ordinary high water line).

"Wetlands" means those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat, or other low land subject to tidal action in the State of Delaware along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary, or tributary waterway or any portion of those waterways, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of 2 feet above local mean high water, and upon which may grow or is capable of growing any of the following plants:

Eelgrass (*Zostera marina*), Widgeon Grass (*Ruppia maritima*), Sago Pondweed (*Potamogeton pectinatus*), Saltmarsh Cordgrass (*Spartina alterniflora*), Saltmarsh Grass (*Spartina cynosuroides*), Saltmarsh Hay (*Spartina patens*), Spike Grass (*Distichlis spicata*), Black Grass (*Juncus gerardii*), Switch Grass (*Panicum virgatum*), Three Square Rush (*Scirpus americanus*), Sea Lavender (*Limonium carolinianum*), Seaside Goldenrod (*Solidago sempervirens*), Seablite (*Suaeda maritima*), Seablite (*Suaeda lineraris*), Perennial Glasswort (*Salicornia virginica*), Dwarf Glasswort (*Salicornia Bigelovii*), Samphire (*Salicornia europaea*), Marsh Aster (*Aster Tenuifolius*), Saltmarsh Fleabane (*Pluchea purpurascens* var. *succulenta*), Mock Bishop's Weed (*Ptilimnium capillaceum*), Seaside Plantain (*Plantago oliganthus*), Orach (*Atriplex patula* var. *hastata*), Marsh Elder (*Iva frutescens* var. *oraria*), Groundsel Bush (*Baccharis halimifolia*), Bladderwrack (*Fucus vesiculosus*), Swamp Rose Mallow, Seaside Hollyhock or Marsh Mallow (*Hibiscus palustris*), Torrey Rush (*Scirpus torreyi*), Narrow-leaved Cattail (*Typha angustifolia*), and Broad-leaved Cattail (*T. latifolia*) and those lands not used for agricultural purposes in 1973, containing 400 acres or more of contiguous non-tidal swamp, bog, muck, or marsh exclusive of narrow stream valleys and tax ditches where fresh water stands most, if not all of the time due to high water table, which contribute significantly to ground water recharge, and which would require intensive artificial drainage using equipment such as pumping stations, drain fields or ditches for the production of agricultural crops.

5.0 Certification Requirements

Any person who applies, uses, or supervises the application of organic or inorganic nutrients to turf or land as a component of a commercial or agricultural business in exchange for a fee or service charge on or after January 1, 2027 must first be certified by the SNMP as a commercial nutrient handler.

6.0 Nutrient Handling Requirements

6.1 As required by Title 3, Chapter 22, nitrogen and phosphorus applied to turf in excess of ¼ acre (10,890 square feet) shall be applied according to the following, unless covered by a nutrient management plan as defined in 3 Del.C. §2202(15):

6.1.1 Nitrogen applications shall not exceed 3.0 pounds per 1,000 square feet per annum or 1.0 pounds per 1,000 square feet per application unless:

6.1.1.1 Enhanced efficiency fertilizers account for less than 70% of application products for a maximum of 3.5 pounds per 1,000 square feet per annum or 1.0 pounds per 1,000 square feet per application.

6.1.1.2 Enhanced efficiency fertilizers account for more than 70% of application products for a maximum of 4.0 pounds per 1,000 square feet per annum or 1.0 pounds per 1,000 square feet per application.

6.1.2 Phosphorus applications may only be applied if a soil test shows a phosphorus fertility index value under 100. The test must be taken for each new customer and annually in the 12-month period phosphorous will be applied.

6.2 Setbacks

6.2.1 No nitrogen or phosphorus should be applied to impervious surfaces. Products that land on impervious surfaces must be swept back into the lawn or otherwise removed and properly disposed.

6.2.2 No nitrogen or phosphorus may be applied within 15 feet of waterways or wetlands, unless using drop spreader, rotary spreader with deflector shield, or targeted spray, then may reduce setback to 10 feet.

7.0 Record Keeping

7.1 Commercial Nutrient Handlers applying nitrogen or phosphorus to turf shall record and keep a contemporaneously recorded log available for inspection at all times by the Secretary of the Delaware Department of Agriculture or the Secretary's designee, or the Commission.

7.2 The log must include:

7.2.1 Name of applicator;

7.2.2 Size of area fertilized;

7.2.3 Date of application;

7.2.4 Address and location of client;

7.2.5 Rate of application;

7.2.6 Total amount of fertilizer used per application;

7.2.7 Analysis of fertilizer product used; and

7.2.8 Original or legible copy of the fertilizer label.

8.0 Penalties

8.1 Non-compliance with this regulation may result in an enforcement action, including imposition of fines, as described:

8.1.1 First offense of non-compliance will result in education and opportunity to correct.

8.1.2 Second offense of non-compliance will result in a monetary penalty of \$500.

8.1.3 Third offense of non-compliance will result in a monetary penalty of \$1000.

8.1.4 Certification suspension to be determined through hearing by the Commission.

28 DE Reg. 806 (05/01/25) (Final)