Chapter 4. Agricultural Stewardship.

§ 3.2-400. Definitions.
As used in this chapter, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including 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.

"Board" means the Soil and Water Conservation Board.

"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.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1.

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with § 2.2-4019.

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

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

"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 that 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 U.S. Department of Agriculture’s Natural Resources Conservation Service Field Office Technical Guide.


§ 3.2-401. Exclusions from chapter.
This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et
seq.) of Chapter 11 of Title 10.1; or (ii) a permit issued by the State Water Control Board, applies. 1996, c. 773, § 10.1-559.2; 2008, c. 860.

§ 3.2-402. 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 where the land lies determine the validity of the information within 21 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 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 that 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 where the agricultural activity is located. The notice shall state that, within 60 days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan that 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 30 days after he receives it. Upon approving the owner’s or operator’s plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date that the owner or operator received the notice that the agricultural activity is creating or will create pollution.

D. The plan shall include an implementation schedule, and implementation of the plan shall be completed within a period specified by the Commissioner, based upon the seasons and other temporal considerations so that the period is that during which the possibility of success in establishment or construction of the measures required in the plan is the greatest, which shall not exceed 18 months from receipt of notice. 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 60 days before the scheduled completion date. The Commissioner shall, within 30 days of receiving the request, inform the owner or operator whether or not an extension has been granted.

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

F. 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.


§ 3.2-403. Issuance of corrective orders.
A. If any owner or operator who has been issued a notice under § 3.2-402 fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures as provided in § 3.2-402, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

B. A corrective order issued pursuant to subsection A shall be issued only after an informal fact-finding conference, 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 chapter, if the Commissioner determines that a recurring polluting condition that is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity that 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, informal fact-finding conference, 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 or an informal fact-finding conference, 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 that has been reviewed by the district where 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 that could not have been reasonably anticipated.


§ 3.2-404. Right of entry; court enforcement.
A. The district or the Commissioner may enter land that 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 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 § 3.2-402, the Commissioner may present to the circuit court of the county or city where the land is located, a petition asking the court to require the owner or operator to allow the Commissioner 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 may enter the land involved and implement the measures. The Commissioner may recover the costs of implementing the stewardship measures from the owner or operator.


§ 3.2-405. Appeal.
Decisions of the Commissioner may be appealed by persons aggrieved to the Board and thereafter to the circuit court in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.


§ 3.2-406. Penalties; injunctions; enforcement actions.
A. Any person violating § 3.2-403 or 3.2-404 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 is 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 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 chapter.


§ 3.2-407. 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 that are
owed in the same manner as provided by law in respect to judgment of a circuit court.


§ 3.2-408. Guidelines to be published by Commissioner; report.
A. In consultation with the districts, the Department of Conservation and Recreation, and
interested persons, the Commissioner shall develop guidelines for the implementation of this
chapter. These guidelines shall address, among other things, the conduct of investigations,
 sources of assistance for owners and operators, and intergovernmental cooperation. Within 90
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 30
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 that 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 of
Conservation and Recreation, 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.


§ 3.2-409. Ordinances.
A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural
stewardship plan development program. Ordinances adopted hereunder may contain only
provisions that parallel §§ 3.2-401 and 3.2-402. 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 § 3.2-402.

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 (§ 62.1-44.15:67 et seq.).


§ 3.2-410. Construction of chapter.
Nothing in this chapter shall be construed as duplicative of regulations governing agricultural
practices under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).
