

Fertilization In Regulators' Crosshairs



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Funny thing about regulations: once they go into effect they seem to breed and multiply. That they accomplish what their sponsors intend is often debatable. Nevertheless, once agencies implement regulations they become canon and may, in fact, be viewed as a model that other agencies in other regions adapt and use.

Almost a decade ago, fertilizers used in the turf and ornamental industry started getting a similar level of scrutiny historically reserved for pesticides. That's when Minnesota took steps to reduce the use of phosphorus fertilizers on its urban soils. The genie was out of the bottle. Severe restrictions on phosphorus for urban lawns have since spread almost nationwide.

"Much of the legislation that happens regarding turf applications is cheap," says Gina Zirkle, environmental scientist at The Scotts Miracle-Gro Company. "Lawmakers can make and implement these bills at little cost. It's a little bit different than putting in a bill to upgrade septic systems or wastewater treatment systems that could cost millions," she said at December's Ohio Turfgrass Conference (OTC).

It comes as no surprise then that the owners of lawn service companies view with concern the proliferation of regulations aimed at professional fertilizer applications.

Given the number of regulations targeting fertilizer applications to urban properties, it should be obvious that government agencies don't trust homeowners or even licensed lawn applicators to do the right thing. So, even though these regulations have provisions mandating education, governments feel they need a stick to ensure compliance.

Actually, most people—LCOs and homeowners alike—use lawn fertilizers

responsibly, says Zirkle, who cited market research conducted by Scotts-Miracle Gro.

About 50 percent of homeowners use no fertilizers or pesticides on their properties, and those that do make, at most, two applications of fertilizer annually, claims Zirkle.

“We found out that 70 percent or more of homeowners are following label directions. They’re reading the label and trying to put it (fertilizer) down correctly,” she adds.

Provisions similar across the nation

Nevertheless, fertilizer regulations have sprouted across the U.S. this past decade. They are broadly defined by geography.

For the most part, laws restricting the sale and use of phosphorus fertilizers on home lawns and other urban properties occur in states attempting to protect their inland streams, ponds and lakes from nutrient overloading leading to the proliferation of algae and aquatic weeds.

Laws restricting the use and timing of nitrogen fertilizers are more prevalent in states and watersheds, communities and counties concerned about the health of their estuaries and bays.

Whether the focus is on reducing nitrogen or phosphorus, turf fertilizer users face similar restrictions from region to region:

1. No fertilizer applications on frozen ground or, in the case of counties and several communities in Florida, during the summer “rainy” season;
2. No applications when there’s rain or the likelihood of rain that can generate runoff from treated properties;
3. Keep or sweep fertilizers off of impervious surfaces; and
4. The establishment of buffer zones between applications and waterways. The buffer zones vary in distance depending upon state or local rules.

These are best management practices (BMPs) that LCOs have long followed, and most property owners probably adhere to, as well. (Indeed, how likely is a homeowner to leave the comfort of their couch with a football game on the TV to traipse behind a spreader on a cold winter day?)

That agencies are acting to protect the nation’s precious water resources is laudable. No right-thinking person, and especially LCOs, would dispute the need to act decisively to combat the development or spread of dead zones in our lakes, estuaries and bays.

While there is widespread agreement on what needs to be done, there remains significant disagreement among stakeholders about how it should be done.

States Implement Fertilizer Certification

Is regulation more effective in driving practices to reduce fertilizer runoff and help heal our nation's waterways? Or is education more effective in reducing the amount of nutrients leaving our farm fields and lawns and ending up in our waterways?

The path that agencies are taking is a combination of the two.

Some agencies have decided that one way to educate professional applicators is to require that they become certified to apply fertilizers. To gain certification, applicators must acquire a specific number of education credits. The requirements are similar to those needed to earn certification for applying pesticides.

"I can see the future for the green industry, and we're going to have education and fertilizer application certification, and they will revolve around the four R's of nutrient management," says turf fertility expert Chuck Darrah, founder and owner of CLC Labs, Westerville, Ohio.

The 4 R's:

1. Use the **right** fertilizer.
2. Use the fertilizer at the **right** rate.
3. Use fertilizer at the **right** time.
4. Use the fertilizer in the **right** place.

Maryland, New Jersey and Florida are among the states that now require certification for professional applicators. This past year, Ohio, responding to the massive outbreaks of algae and cyanobacteria in Lake Erie and Indian Lake, enacted rules requiring applicators who apply fertilizers to more than 50 acres to become certified by 2017. Most Ohio LCOs apply more than 50 acres of fertilizer annually.

Education is better than regulation, says Gina Zirkle, environmental scientist at The Scotts Miracle-Gro Company. "People don't want to be regulated. They would rather learn more about how to use the product."

Getting a seat at the table

In some cases, knowledgeable green industry experts don't get a seat at the table when regulations affecting the industry are being hammered out. "When somebody sits down to write these turfgrass fertilizer bills and they don't understand the technology, whether it's about fertilizer or about application methods or practices, things get put into these bills that don't make any sense," said Peter Landschoot at the recent Ohio Turfgrass Foundation Conference.

Landschoot, professor of turfgrass science, Penn State University, referenced a Pennsylvania bill imposing restrictions on turfgrass fertilizer applications and calling for certification for applicators. He said the state began focusing on turf fertilization as one part of the broader government-

mandated effort to reduce nutrients entering the Chesapeake Bay.

He said the industry learned about the fertilizer bill only after it was in the works in the state capital. At that point, industry representatives inserted themselves into the process.

“When they (lawmakers) start doing these things, you automatically expect they are going to invite all of the stakeholders, all of the people who should have input into these things,” says Landschoot. “But, in fact, they have a small list of people they invite. Nobody from the turf industry was invited.”

Fixing flawed legislation

In meeting with the bill’s sponsors, Landschoot and other turf experts pointed out some of the glitches in the proposed legislation. For example, the bill originally (and arbitrarily) said that applicators could not apply more than 0.7 pounds of soluble N and no more than 0.9 total N per application.

“Interestingly, there were no annual limits on N itself,” recalled Landschoot.

Also, the bill imposed a blackout date of Nov. 15 for lawn fertilizations, which to the industry, especially LCOs in and around Philadelphia, seemed unreasonable.

“Isn’t it better to do this (make applications) according to weather conditions rather than to a date?” offered Landschoot.

As it turned out this particular piece of legislation, even after being approved by the Pennsylvania Senate, missed its calendar deadline for passage and quietly faded away.

Landschoot isn’t convinced that the issue is dead, however.

“My guess is that this is going to come back again. We had the bill where we wanted it, but it just didn’t happen,” he shared.

One of the biggest lessons coming out of the experience, he added, was the need to have somebody at the state level watching out for the industry. In this case, the Pennsylvania Lawn Care Association sought the help of a lobbyist, which turned out to be a wise move.

“You’ve got to have somebody almost in the senator’s office finding out what they are doing or you are going to be totally out of the picture,” Landschoot adds. “By the time you find out, it’s going to be too late.”



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Regulations State-by-State

Regulations focusing on the non-agricultural use of fertilizers vary from state to state. In most cases, the laws apply statewide and pertain to anyone (especially true for phosphorus fertilizer use) making applications. Some states, such as Florida, provide a model ordinance but allow local governments to pass fertilizer laws. While some states require professional applicators to undergo training and become certified to apply fertilizers, many states have not gone that route.

Below is a list of states that have implemented laws regarding urban fertilizer use. Space does not allow a full discussion of each and every law. Use this list as a guide only. Professional applicators must be aware of and comply with all of the laws within their respective markets.

Connecticut (Senate bill SB 440, effective 2013): Pertains to all persons; Phosphorus only to establish new turf or for turf with phosphorus deficiency; No applications within 20 feet from brook, stream, river, lake or pond; For established lawns, the application of any fertilizer containing phosphorus would be prohibited Nov. 15 to March 15.

Delaware (Regulations adopted by the Delaware Nutrient Management Commission, effective 2007): Pertains to all persons; No applications on frozen or saturated ground; Applications prohibited Dec. 7 to Feb. 15.

Florida (Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, effective 2010): Requires all local governments to adopt a model fertilizer use ordinance as a minimum standard. The statutes require every county and municipal government in a watershed containing nutrient-impaired water body to adopt a model ordinance for Florida-Friendly Use on Urban Landscapes.

Illinois (415 ILCS 65, effective 2010): Pertains to applicators for hire; Allowed for turf establishment and repair, for lawns deficient in phosphorus; Setbacks from water 3 to 15 feet; No applications on frozen or saturated soils.

Maine (38 MRSA 419): Pertains to all persons; Phosphorus allowed only for new turf, turf repairs and soil deficiency.

Maryland (Md Laws 6-201 et seq. and 8-801 et seq., effective 2013): Pertains to all persons; Allowed for new turf, turf repair and soil phosphorus deficiency; Setback 10 to 15 feet; Applications prohibited Nov. 16 to Feb. 29 or on frozen ground.

Massachusetts (H.3270, effective 2013): Pertains to all persons; Applications of phosphorus fertilizers only for turf establishment or on lawns with a phosphorus deficiency; Applications forbidden on any property within 20 feet of any surface water, except that this restriction shall not apply where a continuous natural vegetative buffer of at least 10 feet wide separates an area of lawn and surface water, and except that, where a drop spreader, spreader guard or deflector shield is used. In these cases, an application

can be made within 3 feet of surface water; Fertilizer applications forbidden Dec. 1 to April 1.

Michigan (MLCA 324.8501 et seq., effective 2012): Pertains to all persons; Phosphorus only to establish new turf or for turf phosphorus deficiency; Setback 3 to 15 feet; Applications prohibited on frozen and saturated soils.

Minnesota (MSA statute 18C.60 et seq., effective 2004): Pertains to all persons; Applications only to establish new turf or for turf phosphorus deficiency.

New Jersey (NJSA 58:10A-61 et seq.; 4:9-15.13a, effective 2013): Pertains to all persons; Phosphorus only to establish new turf or for turf phosphorus deficiency; Setback 10 to 15 feet; Applications prohibited during heavy rain or when predicted, on saturated or frozen ground, or Nov. 16 to Feb. 29 for consumers and Dec. 2 to Feb. 29 for professional applicators.

New York (ECL 17-2101 et seq., effective 2012): Pertains to all persons; Applications only to establish new turf or for turf phosphorus deficiency; Setback 3 to 20 feet; Applications prohibited Dec. 1 to April 1.

Vermont (10 VSA 1266b, effective 2012): Pertains to all persons; Applications only to establish new turf or for turf phosphorus deficiency; Setback 25 feet; Applications prohibited from Oct. 16 to March 31 or on frozen ground.

Virginia (VA Code 3.2-3600 et seq. and 10.1-104.5 et seq., effective 2013): Pertains to all persons; Applications only to establish new turf, turf repair or for turf phosphorus deficiency.

Washington (RCWA 15.54.500, effective 2013): Pertains to all persons; Phosphorus only to establish new turf or for turf phosphorus deficiency; Applications prohibited on frozen ground.

Wisconsin (WSA 94.643, effective 2010): Pertains to all persons; Phosphorus only to establish new turf or for turf phosphorus deficiency; Applications prohibited on frozen turf.