

1200 Nutrient Management

**1202 Regulations Governing the Processing of Complaints of Violations**

**PREAMBLE**

These regulations have 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 investigation and resolution of complaints concerning alleged violations of the statute or regulations. These regulations were developed by the Commission and the Delaware Department of Agriculture. They are adopted with the guidance, advice, and consent of the Commission.

**1.0 Authority**

1.1 These regulations are promulgated pursuant to the authority provided by 3 **Del.C.** §2221 and 2260, Ch. 22.

**2.0 Purpose**

2.1 These regulations establish processes for the filing, investigation, and resolution of complaints against any person who allegedly has violated the Nutrient Management Law, 3 **Del.C.** Ch. 22, or regulations promulgated pursuant thereto.

**3.0 Definitions**

3.1 For purposes of these regulations, the following words or terms shall have the meanings as indicated:

"**Administrator**," "**Program Administrator**," or "**Nutrient Management Program Administrator**" means the exempt employee of the Delaware Department of Agriculture who is responsible for the operation of the State Nutrient Management Program, or his or her designee.

"**Certificate**" means 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 regulations adopted by the Department of Agriculture with the Commission's approval.

"**Chairman**" means the Chairman of the Delaware Nutrient Management Commission.

"**Commission**" means the Delaware Nutrient Management Commission.

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

**4.0 Complaints And Investigations**

4.1 Any person wishing to file a complaint with the Commission against any person regarding an alleged violation of the Nutrient Management Law, or any regulation promulgated pursuant thereto, shall direct such complaint to the Nutrient Management Program Administrator.

4.2 Complaints must be in writing and include at least the following information:  
4.2.1 name of complainant;

4.2.2 information on how the Administrator may contact the complainant; and

4.2.3 sufficient information to identify the location of the alleged violation, the nature thereof, and any other material fact known to the complainant that supports the complaint.

4.3 The Commission and the Administrator shall not investigate or respond to anonymous complaints, and, when requested, shall keep confidential the identity of complainants.

4.4 The Administrator shall provide the members of the Commission with a copy of any complaint that complies with the above section 2 requirements as soon as practicable, but no later than within 14 days of receipt of the complaint. A copy of any complaint that does not comply with the section 2 requirements shall, if possible, be returned to the complainant with an explanation of how the complaint is deficient.

4.5 Unless otherwise directed by the Chairman or the Commission, the Administrator shall conduct an investigation sufficient to determine if the complaint appears to have any merit and whether there is a possible means of resolving it. If the Administrator determines that the complaint may be meritorious, the alleged violator(s) shall be informed of the complaint and provided an opportunity to respond.

4.6 The Administrator shall prepare a report and present it to the Commission that relates his/her investigative findings and recommendations.

4.7 If the Administrator's report indicates that the complaint appears not to have any merit or that for any other reason enforcement action is not warranted, the Commission may dismiss the complaint.

4.8 If the report indicates that a resolution has been tentatively agreed to by the alleged violator(s) and the Administrator, the Commission may authorize approval of the resolution, pursue another acceptable resolution, or hold a hearing on the complaint.

4.9 The dismissal of a complaint or any other resolution approved by the Commission without holding a hearing shall take place at a public meeting of the Commission and before any complaint is dismissed or any resolution is approved by the Commission, any interested person shall be provided an opportunity to explain to the Commission why such action should not be taken or why a hearing should be held.

## **5.0 Hearings**

5.1 A hearing shall be held on any complaint if it is requested by an interested party or the Commission determines in its sole discretion to hold a hearing.

5.2 Requests for a hearing may be made at any time before the Commission authorizes a disposition of the case without a hearing.

5.3 Any request for a hearing shall be in writing, unless made at the Commission meeting at which the case disposition is considered, and shall include a statement of how the person requesting the hearing may be affected by the resolution of the case.

5.4 The Commission shall send not less than 10 days written notice of any hearing to the alleged violator(s) and any other person who has requested notification.

5.5 All hearings shall be conducted by the Commission. Interested persons shall be provided an opportunity to present relevant evidence that is not unduly repetitive. Formal rules of evidence need not be observed within the discretion of the Commission.

5.6 A record of the hearing shall be kept by the Commission until all appeal periods are exhausted and shall include all the evidence presented to the Commission.

- 5.7 The Commission's decision shall recite:
- 5.7.1 its findings of fact;
  - 5.7.2 the manner in which the Commission construed the law and applied it to the facts;
  - 5.7.3 any remunerative action a violator must take or has taken;
  - 5.7.4 any fine a violator must pay pursuant to Department regulations and a reference to the applicable regulations; and
  - 5.7.5 any revocation, suspension or modification to any certificate that has occurred.
- 5.8 Any decision of the Commission made pursuant to PART E shall be final and conclusive unless a party to such hearing shall appeal the decision within 15 days of receipt of notice thereof.

**6.0 Effective Date**

These regulations shall become effective on January 10, 2001  
4 DE Reg. 1121 (1/1/01)