



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Application Restrictions Statutes & Regulations

Massachusetts

www.NationalAgLawCenter.org



Application Restrictions

STATE OF MASSACHUSETTS

- 1) ALM GL ch. 128, §§ 2(k), 65A(b)(c)(d); 330 CMR 31.03
- 2) ALM GL ch. 111, §§ 159, 160, 160B; 310 CMR 22.20B(4)

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Massachusetts General Court.

1) ALM GL ch. 128, §§ 2(k), 65A(b)(c)(d); 330 CMR 31.03

§ 2. Powers and duties of the department.

[. . .]

(k) Maintain authority to regulate and enforce the registration and application of plant nutrients put on or in soil to improve the quality or quantity of plant growth, including, but not limited to, fertilizer, manure and micronutrients in the commonwealth.

The department shall promulgate regulations that specify when plant nutrients may be applied and locations in which plant nutrients shall not be applied. Subject to appropriation, the department may also develop regulations regarding the use of plant nutrients designed to mitigate significant risks to human health and the environment. The department may limit the scope of those regulations regionally as appropriate. The department shall work in conjunction with the University of Massachusetts Amherst Extension to ensure any regulations of the department relative to plant nutrients are consistent with the program's published information, educational materials and other public outreach programs relative to nutrient management and fertilizer guidelines.

The department may establish fines for violations of regulations promulgated under this subsection which shall not exceed \$250 for a first offense, \$500 for a second offense and \$1000 for a third or subsequent offense.

A person aggrieved by the assessment of a fine under this subsection may appeal that fine by filing a notice of appeal with the division of administrative law appeals within 10 days of the receipt of the notice of the fine. An appellant shall be granted a hearing before the division of administrative law appeals under chapter 30A. The hearing officer may affirm or, if the aggrieved person demonstrates by a preponderance of evidence that the fine was erroneously issued, vacate or modify the fine. A person aggrieved by a decision of the hearing officer may file an appeal in the superior court under said chapter 30A.

§ 65A. Limitation on the purchase and application of phosphorus containing fertilizer; additional regulations for the limitation of non-point source pollution from plant nutrients.

[. . .]

(b) The department shall promulgate regulations to implement subsection (a) and may, consistent with subsection (a) and in consultation with the department of environmental protection, develop additional regulations designed to limit non-point source pollution from plant nutrients including, but not limited to, phosphorous and nitrogen. Such regulations may require retailers of phosphorus containing fertilizer to display such fertilizers separately and post signs specifying when and where phosphorus containing fertilizer may be applied.

(c) Regulations promulgated under this section shall be designed to maximize credits provided to municipalities by the United States Environmental Protection Agency relative to stormwater discharge and similar permits, which the Environmental Protection Agency may require of municipalities.

(d) Violations of any regulations promulgated under this section shall be subject to the penalties set forth in subsection (k) of section 2.

31.03: Plant Nutrient Application Requirements for Agricultural Land

(1) Any Person who applies, or authorizes any Person by way of service contract or other arrangement to apply, Plant Nutrients to Agricultural Land shall:

(a) Apply Plant Nutrients according to *UMass Guidelines*, if available;

(b) Not apply Plant Nutrients directly to Surface Water;

(c) Not apply Plant Nutrients to Saturated Soil unless normal operation requires activities to take place at a time when such a condition exists;

(d) Not apply to Frequently Flooded Soils during a period when flooding is expected;

(e) Not apply Plant Nutrients to Frozen Soil or Snow Covered Soil, except for the conditions outlined in 330 CMR 31:03(3); and

(f) In addition to the requirements of 330 CMR 31.00, applications of Biosolids must be made in accordance with the requirements of 310 CMR 32.00: *Land Application of Sludge and Septage*.

(2) Application Setbacks.

(a) No application of Plant Nutrients shall be made:

1. within 100 feet of Surface Waters used for public water supplies;
2. in a Zone I of a Public Water Supply Well;
3. using a broadcast method either with or without Incorporation within 50 feet from Surface Waters unless a Vegetated Buffer is present, in which case a setback of 25 feet applies;
4. by band or side dress application or Injection of Plant Nutrients within ten feet from Surface Waters; or
5. on pastures and hayfields within ten feet from Surface Waters.

(b) Except for the application setback in a Zone I, the setbacks in 330 CMR 31.03(2)(a) shall not apply to crop growing systems that operationally require proximity to Surface Waters, provided such applications are done in accordance with *UMass Guidelines* for such crop growing systems.

(c) These application setbacks shall not prevent activities that are allowed as Normal Maintenance of Land in Agricultural Use, as defined by the Massachusetts Wetlands Protection Act M.G.L. c. 131, § 40 and 310 CMR 10.00: *Wetlands Protection*.

(3) Limitations on the Applications of Agricultural Byproducts or Agricultural Process Water to Frozen Soil or Snow Covered Soil.

(a) Applications of Agricultural Byproducts and Agricultural Process Water to Frozen Soil or Snow Covered Soil shall only be made if:

1. the Agricultural Operation has inadequate storage and anticipates exceeding the available storage capacity limit during the time of the year that Frozen Soils and Snow Covered Soils typically occur;
2. the Agricultural Byproduct is not a Stackable Agricultural Byproduct; and
3. there is no other reasonable management option.

(b) All applications of Agricultural Byproduct or Agricultural Process Water to Frozen Soil or Snow Covered Soil shall:

1. not be made to areas where slopes are greater than 7% when applying solid materials;

2. not be made to areas where slopes are greater than 2% when applying liquid materials;
3. not be made within 200 feet of Surface Waters;
4. minimize the rates of application and available acreage used to the greatest extent practical; and
5. not be made unless there is at least 30% crop residue or a vegetative cover present in the field receiving the application.

(c) The restrictions set forth in 330 CMR 31.03(3)(a) shall not apply to:

1. Animal Manure deposited directly by livestock; or
2. a livestock operation generating less than 50,000 gallons of Animal Manure or less than 270 cubic yards of solid Animal Manure, which corresponds to estimated Animal Manure production of 15 lactating dairy cows housed in a barn for 6 1/2 months per year.

(4) Temporary In-field Stacking of Stackable Agricultural Byproduct as a part of land application of this material is permissible throughout the year provided the following conditions are met:

(a) Animal Manure stacked in a temporary field stockpile shall be land applied in the first spring season following the placement of the stockpile; and

(b) The stacks shall be constructed using *UMass Guidelines*, or if none are available, then the following conditions must be met:

1. placed on appropriate soils, excluding Coarse Textured Soils or Gravelly Soils;
2. at least 100 feet from any Surface Waters or, if a Vegetated Buffer is in place, at least 35 feet from Surface Waters;
3. outside the Zone I of a Public Water Supply well;
4. at least 200 feet from any residence not owned or leased by the Operator;
5. outside of Frequently Flooded Soils;
6. of shape and size that minimizes absorption of rainfall; and
7. covered when placed in a Zone A to minimize runoff.

(5) Should *UMass Guidelines* not be available when referenced in this 330 CMR 31.00, the applicator or operator must follow the equivalent extension service standards or standard industry practices until such time that *UMass Guidelines* become available.

2) ALM GL ch. 111, §§ 159, 160, 160B; 310 CMR 22.20B(4)

§ 159. Supervision of inland waters.

The department of environmental protection, in this section and sections one hundred and sixty to one hundred and sixty-six, inclusive, called the department, shall have the general oversight and care of all inland waters and of all streams, ponds and underground waters used by any city, town, water supply or fire district or public institution or by any water or ice company or any person in the commonwealth as sources of ice or water supply and of all springs, streams and watercourses tributary thereto. It shall be provided with maps, plans and documents suitable for such purposes, and shall keep records of all its transactions relative thereto. It shall give notice to the attorney general of any violation of law relative to the pollution of water supplies and inland waters.

§ 160. Examination of water supply; assistance to cities, towns and districts for groundwater aquifers and recharge areas.

The department may cause examinations of such waters to be made to ascertain their purity and fitness for domestic use, or the possibility of their impairing the interests of the public or of persons lawfully using them or of imperilling the public health. It may make rules and regulations and issue such orders as in its opinion may be necessary to prevent the pollution and to secure the sanitary protection of all such waters used as sources of water supply and to ensure the delivery of a fit and pure water supply to all consumers. It may delegate the granting and withholding of any permit required by such rules or regulations to state departments, boards and commissions and to selectmen in towns, and to boards of health, water boards and water commissioners in cities and towns, to be exercised by such selectmen, departments, boards and commissions, subject to such recommendation and direction as shall be given from time to time by the department; and upon complaint of any person interested, the department shall investigate the granting or withholding of any such permit, and make such orders relative thereto as it may deem necessary for the protection of the public health and to restrain the use of such waters to the extent as in its opinion such use will tend to adversely affect the public health.

Whoever violates any such orders, rules or regulations: (a) shall be punished by a fine of not more than twenty-five thousand dollars, to the use of the commonwealth, for each day that such violation occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment; or (b), shall be subject to civil penalty not to exceed twenty-five thousand dollars per day for each day such violation occurs or continues.

The department shall, within one hundred and eighty days of the adoption of a national primary drinking water regulation for lead, promulgate state regulations for lead in drinking water that are no less stringent than the federal standard. Such regulations shall also specify sampling procedures to be followed by water suppliers that are adequate to ensure detection of dangerous levels of lead at all appropriate points in the distribution system, including residential tap water. The department shall monitor the results of such sampling. The department shall also, by July first, nineteen hundred and eighty-eight, promulgate regulations specifying corrosion control measures to be taken by communities in which the drinking water supplied to consumers poses a risk of exposure to dangerous levels of lead.

The department of environmental protection shall establish a program to assist the cities, towns and districts of the commonwealth to acquire, by purchase, gift, lease, eminent domain, or otherwise lands and waters and easements therein to protect and conserve groundwater aquifers and recharge areas, surface water resources and watersheds, and land adjacent to, or nearby said resources, as it determines necessary to meet further water resource needs of the commonwealth for municipal or regional water supply. Said department shall develop criteria and procedures for the administration of said program subject to the approval of the water resources commission. No such city, town or district shall receive such assistance hereunder unless such city, town or district has adopted or is in the process of adopting a local water resources management plan pursuant to regulations established by the water resources commission.

§ 160B. Water quality violations; orders of department of environmental quality engineering; enforcement.

The department shall immediately report any violations of standards or regulations regulating the quality of water used for drinking, domestic or culinary purposes to the department of public health. If the department of public health ascertains from its own inspection or from the report of the department that there is a violation of those regulations or standards which may endanger the public health, it may order the appropriate party to cease violating the regulation and to take whatever steps are necessary to purify the water. If any such order of the department of public health conflicts with any order of the department the order of the department of public health shall take precedence. Such an order will be enforceable by the superior court sitting in equity upon the petition of the department of public health.

22.20B: Surface Water Supply Protection

(1) To protect surface waters used as sources of drinking water supply from contamination, the requirements of 310 CMR 22.20B shall apply to Zones A, B, C of a surface water source, except at:

(a) Rivers and streams designated as Class B waters pursuant to 314 CMR 4.00: Massachusetts Surface Water Quality Standards which are used as drinking water sources and are not impounded at some point by means of a dam or dike to create a reservoir at which the water supply intake is located;

(b) Emergency sources approved by the Department under the provisions of M.G.L. c. 21G.

(2) On and after January 1, 2001, a public water system shall prohibit the following new or expanded land uses within the Zone A of its surface water sources.

(a) All underground storage tanks,

(b) Above-ground storage of liquid hazardous material as defined in M.G.L. c. 21E, or liquid propane or liquid petroleum products, except as follows:

1. The storage is incidental to:

a. normal household use, outdoor maintenance, or the heating of a structure;

b. use of emergency generators;

c. a response action conducted or performed in accordance with M.G.L. c. 21E and 310 CMR 40.000: *Massachusetts Contingency Plan* and which is exempt from a ground water discharge permit pursuant to 314 CMR 5.05(14); and

2. The storage is either in container(s) or above-ground tank(s) within a building, or outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in accordance with applicable state and local requirements;

(c) Treatment or disposal works subject to 314 CMR 3.00: *Surface Water Discharge Permit Program* or 5.00: *Ground Water Discharge Permit Program*, except the following:

1. the replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;

2. treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in non-compliance with 310 CMR 15.000: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, provided the facility owner demonstrates to the Department's satisfaction that there are no feasible siting locations outside of the Zone A. Any such facility shall be permitted in accordance with 314 CMR 5.00: *Ground Water Discharge Permit Program* and shall be required to disinfect the effluent. The Department may also require the facility to provide a higher level of treatment prior to discharge;
3. treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or (13).
4. discharge by public water system of waters incidental to water treatment processes.

(3)

- (a) All on-site subsurface sewage disposal systems, as defined in 310 CMR 15.000: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, within Zones A, B, and C, shall be in compliance with the requirements of 310 CMR 15.000.
- (b) Within the Zone A of all surface water supplies and tributaries as defined in 310 CMR 22.02, all sewer lines and appurtenances are prohibited, except as required to eliminate existing or potential pollution to the water supply, or where the crossing of tributaries is necessary to construct a public sewer system. Where the exception is met, watertight construction of sewer lines and manholes shall be used.
- (c) Within 1,000 feet of surface water supplies and tributaries, all pumping stations shall have standby power and high water alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the owner of the wastewater treatment facility and submitted to the Department for approval.
- (d) Beyond 1,000 feet, and within the watershed of surface water supplies, the Department may in specific circumstances, after review, require additional controls when deemed necessary for protection of public health.

(4) No stabling, hitching, standing, feeding or grazing of livestock or other domestic animals shall be located, constructed, or maintained within 100 feet of the bank of a surface water source or tributary thereto. Owners and operators of agricultural operations should consult the Massachusetts Department of Agricultural Resources *On-farm Strategies to Protect Water Quality - An Assessment & Planning Tool for Best Management Practices* (December 1996) for information about technical and financial assistance programs related to erosion and sediment control and nutrient, pest, pesticide, manure, waste, grazing, and irrigation management.

(5) No burial shall be made, except by permission in writing by the Board of Water Commissioners or like body having jurisdiction over such source of supply, in any cemetery or other place within 100 feet of the high water mark of a source of public water supply or tributary thereto. No lands not under the control of cemetery authorities and used for cemetery purposes, from which lands the natural drainage flows into said source of water supply or tributary thereto, shall be taken or used for cemetery purposes until a plan and sufficient description of the lands is presented to the Department and until such taking or use is expressly approved in writing by the Department.

(6) No person shall swim, wade or bathe in any public surface water source and no person shall, unless permitted by written permit by the Board of Water Commissioners or like body having jurisdiction over such source, fish in; enter or go in any boat, seaplane, or other vehicle; enter upon the ice for any purpose, including the cutting or taking of ice; or cause or allow any animal to go into, or upon, any surface water source or tributary thereto.

(7) Enforcement. A public water system has the following enforcement responsibilities with respect to protection of the Zone A, B, and C of its surface water source(s)

(a) A public water system shall conduct regular and thorough inspections of Zones A, B, and C to determine and enforce compliance with 310 CMR 22.20B. The public water system shall take prompt enforcement actions against persons violating 310 CMR 22.20B, and report all such enforcement actions to the Department in the system's Annual Statistical Report the results of the regular inspections made during the preceding calendar year. The report shall include the number and dates of the inspections, the number, nature and outcome of violations found, and enforced against by the public water system, and the general condition of the watershed at the time of the last inspection.

(b) the public water system shall document on a form provided by the Department and submitted to the Department in calendar year 2001, that the public water system has established a protocol that provides the system with an opportunity to review and comment on all proposed new or expanded land uses or activities within the watershed of its surface water source(s) to local boards, commissions and other authorities with primary responsibilities for approving such uses and activities.

(c) The Department may take enforcement actions against any public water system which fails to carry out its enforcement responsibilities under 310 CMR 22.20B, or may enforce directly against persons violating 310 CMR 22.20B.

(8) No person shall apply herbicides to any surface water body including but not limited to any reservoir and their tributaries, which serve as a source of public water supply without a permit issued by the Department pursuant to M.G.L. c. 111, § 5E. This requirement does not apply to the application of algaecides containing copper by the public water system. However, the public water system shall notify the Department in writing prior to the application of such algaecides.