

CHAPTER 2022-177

Committee Substitute for Committee Substitute for Senate Bill No. 1000

An act relating to nutrient application rates; amending s. 576.011, F.S.; defining the terms “certified professional” and “site-specific nutrient management”; amending s. 576.045, F.S.; providing legislative findings and intent; authorizing the use of site-specific nutrient management in specified circumstances; revising the authorized uses of specified funds; authorizing citrus producers to use written recommendations from certified professionals to tailor their recommended nutrient application rates under certain circumstances; requiring citrus producers to keep records regarding the determination that the published nutrient application rates are not appropriate and any recommendations for site-specific nutrient management for a specified period of time; requiring producers using site-specific nutrient management to enroll in and implement certain applicable best management practices; providing a presumption of compliance with certain requirements for producers using site-specific nutrient management; directing the University of Florida Institute of Food and Agricultural Sciences to analyze the use of site-specific nutrient management for certain crops, develop a research plan and certain recommendations, and submit an annual report to the Governor and Legislature by a specified date; extending the expiration of certain provisions; amending s. 403.067, F.S.; conforming a provision to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (5) through (33) and (34) through (42) of section 576.011, Florida Statutes, are redesignated as subsections (6) through (34) and (36) through (44), respectively, and new subsections (5) and (35) are added to that section, to read:

576.011 Definitions.—When used in this chapter, the term:

(5) “Certified professional” means an individual who holds a certified crop adviser designation issued by the American Society of Agronomy, who has passed the society’s Southeast Region Certified Crop Adviser Exam, who holds a 4R Nutrient Management Specialty certification, and whose credentials have been verified by the society’s Florida Certified Crop Adviser Board.

(35) “Site-specific nutrient management” means the application of nutrients in accordance with s. 576.045(4).

Section 2. Section 576.045, Florida Statutes, is amended to read:

576.045 Nitrogen and phosphorus; findings and intent; fees; purpose; best management practices; waiver of liability; compliance; rules; exclusions; expiration.—

(1) FINDINGS AND INTENT.—

(a) The Legislature finds that:

1. Nitrogen and phosphorus residues have been found in groundwater, surface water, and drinking water in various areas throughout this the state at levels in excess of established water quality standards. The Legislature further finds that some fertilization-management practices could be a source of such contamination.

2. Nutrient application rate recommendations are presently under review by the University of Florida Institute of Food and Agricultural Sciences so that they can reflect the latest methods of producing agricultural commodities and changes to nutrient application practices which are appropriate due to disease, new crop varieties, changes in United States Department of Agriculture Agricultural Marketing Service standards, growing techniques, and market conditions.

3. To gain efficiency and be able to compete successfully with foreign producers that benefit from lower costs of production and favorable trade conditions, many producers in this state grow more product per acre, resulting in higher production at lower overall costs. This high-efficiency crop production requires nutrient application to be based on the intensity of production on a per-acre basis, rather than the lower per-acre production on which past research based its recommended nutrient application rate.

4. Florida citrus faces challenges that include citrus greening, citrus canker, windstorms, a freeze in 2022 that resulted in the smallest citrus harvest since 1946, labor and supply chain shortages in 2022, and other events that result in the fruit not being harvested. In order to continue production of this state's iconic crop, nutrient application rates must reflect fruit grown on the tree after the bloom during the growing season and not fruit ultimately harvested for market delivery.

(b) It is the intent of the Legislature to:

1. Improve fertilization-management practices as soon as practicable in a way that protects this the state's water resources and preserves a viable agricultural industry. This goal is to be accomplished through research concerning best management practices and education and incentives for the agricultural industry and other major users of fertilizer.

2. Accommodate continued citrus production without interruption as research to formally revise nutrient application rates is completed.

3. Authorize the use of site-specific nutrient management for Florida citrus to adjust recommended nutrient application rates when site-specific

nutrient management is supported by written recommendations from a certified professional and documented using production and field data that is retained for review during the best management practices implementation verification process.

(2) FEES.—

(a) In addition to the fees imposed under ss. 576.021 and 576.041, the following supplemental fees shall be collected and paid by licensees for the sole purpose of implementing this section:

1. One hundred dollars for each license to distribute fertilizer.
2. One hundred dollars for each specialty fertilizer registration.
3. Fifty cents per ton for all fertilizer that contains nitrogen or phosphorus and that is sold in this state.

(b) All fees paid to the department under this section are due and payable at the same time and in the same manner as the fees specified in ss. 576.021 and 576.041 and are subject to all provisions contained in those sections.

(c) All fees paid under this section must be deposited into the General Inspection Trust Fund and are exempt from ~~the provisions of~~ s. 215.20. These funds are to be appropriated annually to the department and allocated according to a memorandum of understanding between the department and the Department of Environmental Protection. The allocation of indirect costs to these funds by any state agency is specifically prohibited.

(3) USE OF FUNDS PURPOSE.—The funds collected pursuant to subsection (2) must be used by the department for:

(a) Research, development, demonstration, and implementation of suitable interim measures, best management practices, or other measures used to achieve state water quality standards for nitrogen and phosphorus criteria, including site-specific nutrient management. Implementation of interim measures, best management practices, and other measures may include cost-sharing grants, technical assistance, implementation tracking, and conservation leases or other agreements for water quality improvement.

(b) Completing the analysis, research plan and recommendations, and report required under paragraph (4)(b).

(c) Approving, adopting, publishing, and distributing interim measures, best management practices, or other measures. In the process of developing, approving, and adopting interim measures, best management practices, or other measures, the department shall consult with the Department of Environmental Protection, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups.

(d)(e) Reimbursing the Department of Environmental Protection for costs incurred which are associated with:

1. Monitoring and verifying the effectiveness of the interim measures, best management practices, or other measures approved and adopted under subsection (7) (6) at representative sites. The Department of Environmental Protection shall use its best professional judgment in making the initial determination of the effectiveness of the interim measures, best management practices, or other measures.

2. Sampling, analysis, and restoration of potable water supplies, pursuant to s. 376.307, found to contain levels of nitrate in excess of state water quality standards, which excess is determined to be the result of the application of fertilizers or other soil-applied nutritional materials containing nitrogen.

This subsection must be implemented through a memorandum of understanding between the department and the Department of Environmental Protection.

(4) SITE-SPECIFIC NUTRIENT MANAGEMENT.—

(a) The use of site-specific nutrient management to tailor recommended nutrient application rates is authorized for citrus crops where site-specific nutrient management is supported by a certified professional.

1. When recommended nutrient application rates published by the Institute of Food and Agricultural Sciences at the University of Florida or other state universities and Florida College System institutions that have agricultural research programs are not appropriate for a specific producer due to soil conditions, disease, crop varieties, subsequent crop rotations, planting density, market requirements, or site-specific conditions, written recommendations from a certified professional may be used to tailor the recommended nutrient application rates for that producer. The determination that the published nutrient application rates are not appropriate and the recommendation for the tailoring of nutrient application rates must be documented with one or more of the following records, as appropriate: soil tests, plant tissue tests, pathology reports, yield response curves, growth records, or site-specific conditions, together with records specifying the application rate, the types or forms of nutrients used, the nutrient sources used, and the placement and timing of the nutrient sources. A producer must retain the records for 5 years to support the use of site-specific nutrient management.

2. Citrus producers using site-specific nutrient management must be enrolled in and implementing all other best management practices adopted by the department and identified in the enrolled notice of intent required under subsections (5) and (6) and s. 403.067(7)(c).

3. Notwithstanding any other law, citrus producers implementing site-specific nutrient management in compliance with this section are provided a presumption of compliance with state water quality standards, may rely on the waiver of liability in subsection (5), and may be deemed to be in compliance with s. 403.067(7)(c) and subsections (5) and (6).

(b) The University of Florida Institute of Food and Agricultural Sciences shall analyze the use of site-specific nutrient management for crops other than citrus and crop rotations, develop a research plan and interim recommendations for implementation of site-specific nutrient management, and submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 30 of each year, beginning in 2023.

~~(5) WAIVER OF LIABILITY.—Notwithstanding any other provision of law, the Department of Environmental Protection may not is not authorized to institute proceedings against any person or the Federal Government under the provisions of s. 376.307(5) to recover any costs or damages associated with nitrogen or phosphorus contamination of groundwater or surface water, or the evaluation, assessment, or remediation of such contamination of groundwater or surface water, including sampling, analysis, and restoration of potable water supplies, where the contamination of groundwater or surface water is determined to be the result of the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus, provided the property owner or leaseholder:~~

~~(a)1. Provides the department with a notice of intent to implement applicable interim measures, best management practices, or other measures adopted by the department which practices or measures have been verified by the Department of Environmental Protection to be effective; and~~

~~2. Implements applicable interim measures, best management practices, or other measures as soon as practicable according to rules adopted by the department or no longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus; or~~

~~(b) No longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus as of the effective date of this section.~~

~~(6)(5) COMPLIANCE.—If the property owner or leaseholder implements interim measures, best management practices, or other measures adopted by the department which practices or measures have been verified by the Department of Environmental Protection to be effective, and complies with the following, there is a presumption of compliance with state water quality standards for such criteria under this section and s. 403.067(7)(c) with respect to the application of fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus:~~

(a)1. Provides the department with a notice of intent to implement applicable interim measures, best management practices, or other measures adopted by the department; and

2. Implements applicable interim measures, best management practices, or other measures as soon as practicable according to rules adopted by the department or no longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus; or

(b) No longer applies fertilizers or other soil-applied nutritional materials containing nitrogen or phosphorus as of the effective date of this section.

~~(7)~~(6) RULEMAKING.—The department, in consultation with the Department of Environmental Protection, the Department of Health, the water management districts, environmental groups, the fertilizer industry, and representatives from the affected farming groups, shall adopt rules to:

(a) Specify the requirements of interim measures, best management practices, or other measures to be implemented by property owners and leaseholders.

(b) Establish procedures for property owners and leaseholders to submit the notice of intent to implement and comply with interim measures, best management practices, or other measures.

(c) Establish schedules for implementation of interim measures, best management practices, or other measures.

(d) Establish a system to assure the implementation of best management practices, including recordkeeping requirements.

~~(8)~~(7) OTHER PROVISIONS.—

(a) This section does not limit the authority of the Department of Environmental Protection to regulate discharges associated with the commercial feeding of livestock and poultry defined in chapter 585, including that of dairy farm and egg production operations, or the disposal of sludge, residuals, or septage. This paragraph does not grant additional authority to regulate these discharges.

(b) This section does not limit federally delegated regulatory authority.

(c) The Department of Environmental Protection may adopt rules to establish criteria for dairy farms which provide reasonable assurance that state nitrate groundwater quality standards will not be violated and which, provided such criteria are met, shall prohibit the Department of Environmental Protection from instituting proceedings against any dairy farmer under the provisions of s. 376.307(5) and shall provide a presumption of compliance with safe nitrate groundwater quality standards.

(d) This section, except for subsection (2), does not apply to the manufacture, mixing, or blending of fertilizer, including fertilizer containing sludge, residuals, or septage.

(9)(8) EXPIRATION OF PROVISIONS.—Subsection (4) expires on June 30, 2026. Subsections (1), (2), (3), (5) (4), and (7) (6) expire on December 31, 2032 2022. Subsections (6) (5) and (8) (7) expire on December 31, 2037 2027.

Section 3. Paragraph (c) of subsection (7) of section 403.067, Florida Statutes, is amended to read:

403.067 Establishment and implementation of total maximum daily loads.—

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.—

(c) *Best management practices.*—

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources in allocations developed pursuant to subsection (6) and this subsection or for programs implemented pursuant to paragraph (12)(b). These practices and measures may be implemented by those parties responsible for agricultural pollutant sources, and the department, the water management districts, and the Department of Agriculture and Consumer Services shall assist with implementation. In the process of developing and adopting rules for interim measures, best management practices, or other measures, the Department of Agriculture and Consumer Services shall consult with the department, the Department of Health, the water management districts, representatives from affected farming groups, and environmental group representatives. Such rules must also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including site inspection and recordkeeping requirements.

3. When interim measures, best management practices, or other measures are adopted by rule, the effectiveness of such practices in

achieving the levels of pollution reduction established in allocations developed by the department pursuant to subsection (6) and this subsection or in programs implemented pursuant to paragraph (12)(b) must be verified at representative sites by the department. The department shall use its best professional judgment in making the initial verification that the best management practices are reasonably expected to be effective and, when applicable, shall notify the appropriate water management district or the Department of Agriculture and Consumer Services of its initial verification before the adoption of a rule proposed pursuant to this paragraph. Implementation, in accordance with rules adopted under this paragraph, of practices that have been initially verified to be effective, or verified to be effective by monitoring at representative sites, by the department, or are authorized by s. 576.045, shall provide a presumption of compliance with state water quality standards and release from s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research projects funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best management practices shall be granted a presumption of compliance with state water quality standards and a release from s. 376.307(5). The presumption of compliance and release is limited to the research site and only for those pollutants addressed by the interim measures or best management practices. Eligibility for the presumption of compliance and release is limited to research projects on sites where the owner or operator of the research site and the department, a water management district, or the Department of Agriculture and Consumer Services have entered into a contract or other agreement that, at a minimum, specifies the research objectives, the cost-share responsibilities of the parties, and a schedule that details the beginning and ending dates of the project.

4. When water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures required by rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. If the reevaluation determines that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Subject to subparagraph 6., the Department of Agriculture and Consumer Services shall provide to the department information obtained pursuant to subparagraph (d)3.

6. Agricultural records relating to processes or methods of production, costs of production, profits, or other financial information held by the

Department of Agriculture and Consumer Services pursuant to subparagraphs 3., 4., and 5. or pursuant to any rule adopted pursuant to subparagraph 2. are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request, records made confidential and exempt pursuant to this subparagraph shall be released to the department or any water management district provided that the confidentiality specified by this subparagraph for such records is maintained.

7. Subparagraphs 1. and 2. do not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

Section 4. This act shall take effect July 1, 2022.

Approved by the Governor June 8, 2022.

Filed in Office Secretary of State June 8, 2022.