Ohio Senate Approves Agricultural Nutrient Management Bill

The Ohio Senate has approved a bill directing the Ohio Department of Agriculture (ODA) to establish a fertilizer applicator certification program in Ohio. The sponsors of Senate Bill 150, Senator Cliff Hite and Senator Bob Peterson, designed the legislation to address agricultural nutrient runoff into Ohio waterways and the algae problems in Grand Lake St. Marys and Lake Erie. According to Senator Hite, the bill hinges on a new education and certification program that will give farmers additional information about fertilizer and nutrient use best practices.

Peggy Kirk Hall, J.D., Assistant Professor and Field Specialist, Agricultural & Resource Law, College of Food, Agricultural & Environmental Sciences, OSU Extension answers a few basic questions farmers might have about the proposed program:

- **When would the program begin?** If the bill is passed by the Ohio House of Representatives, the fertilizer application certification program would begin on September 30 on the third year following the law’s effective date.
- **Who would have to be certified?** Someone who applies “fertilizer” for agricultural production on land more than 50 acres in size would have to be certified by ODA as a fertilizer applicator, or would have to be acting under the instruction of a certified fertilizer applicator.
- **Would there be any exemptions from the program?** Those who would make applications of fertilizer on land parcels of 50 acres or less would be exempt from the certification requirement. The bill would also allow the ODA director to establish additional exemptions for certain persons or certain “types of cultivation.”
- **What fertilizers would the program cover?** Under the bill, “fertilizer” means any substance containing nitrogen, phosphorus, or potassium or any recognized plant nutrient element or compound that is used for its plant nutrient content or for compounding mixed fertilizers. The definition of fertilizer does not include lime, manure and residual farm products such as bedding, wash waters, waste feed, silage drainage and certain dead animal composts, unless those are mixed with fertilizer materials or distributed with a guaranteed analysis.
- **What would the certification program involve?** The Senate’s bill directs that the program must educate applicants on the time, place, form, amount, handling, and application of fertilizer—commonly referred to as the "4-Rs" of nutrient stewardship (right fertilizer source at the right
rate, at the right time and in the right place). The bill also states that the program must "serve as a component of a comprehensive state nutrient reduction strategy addressing all sources of relevant nutrients" and must "support generally practical and economically feasible best management practices."

- **Would there be a certification fee?** The bill allows the ODA to establish a fee for applicants who seek certification, but the fee may not exceed the fee charged for the state’s pesticide applicator certification program. Additionally, the bill exempts persons who hold an Ohio commercial or private pesticide applicator’s license from paying an additional application fee if they also seek fertilizer application certification.

Other important provisions in Senate Bill 150 include:

**Recordkeeping requirements.** Certified applicators would have to maintain fertilizer application records for at least three years from the date of a fertilizer application. The records must include the date, place and rate of application, an analysis of the fertilizer and the name of the person applying the fertilizer. Applicators would not be required to submit the records to ODA on a regular basis, but would have to make the records available upon a request by the agency.

**Emergency revocation and suspension powers.** The bill would allow the ODA director to immediately deny, suspend, revoke, refuse to renew or modify a fertilizer applicator certificate if there is "substantial reason to believe the certificate holder recklessly applied fertilizer in such a manner that an emergency exists that presents a clear and present danger to human or animal health."

**Voluntary Nutrient Management Plans.** The bill would allow a person who owns or operates agricultural land to develop a voluntary nutrient management plan in collaboration with Ohio State University, the Soil and Water Conservation District or the Natural Resource Conservation Service or its certified providers and submit the plan for approval by the Soil and Water Conservation District. A voluntary nutrient management plan would be an important criteria for immunity from civil liability, discussed below.

**Legal Defense against Civil Actions.** Under the bill, a person sued in a claim involving liability for an application of fertilizer would have a legal defense that would prevent liability upon showing these three criteria:

- The person is a certified fertilizer applicator or under the control of a certified applicator;
- The person properly maintained fertilizer application records as required by the certification program;
- The fertilizer was applied according to and in substantial compliance with an approved voluntary nutrient management plan.

Watch now for the agricultural nutrient management bill to be introduced in the Ohio House of Representatives for final approval.

For more information about OSU Extension, Darke County, visit the Darke County OSU Extension website at www.darke.osu.edu, the OSU Extension Darke County Facebook page or contact Sam Custer, at 937.548.5215.