

# Nutrient Reduction Regulation

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**THE OHIO STATE UNIVERSITY**

COLLEGE OF FOOD, AGRICULTURAL,  
AND ENVIRONMENTAL SCIENCES



# Picture This

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# Or this

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Or this

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# Or this

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## But in Ohio.....

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Before we get to that step did you (if you farm more than 50 acres)?

- Make sure you hold a Fertilizer Certificate?

OR

- Make sure you are within 25 miles or 2 hours of travel from the certified applicator for your farm

# But.....

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Before we get to Fertilizer or Manure application did you?

- Check that your fertilizer certified is up to date
  - You paid for and attended a 3 hour class for certification (cost of \$35) and paid \$30 for your certification to Ohio Department of Agriculture –OR--
  - Took and passed the Fertilizer Certification
  - Re-certified within 3 years of your certificate with a 1 hour class (\$10) and paid for your renewal (\$30)

# Since April 21, 2014

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- Senate Bill 150 effective on April, 21, 2014 required all farmers in Ohio who apply fertilizer to more than 50 acres of agricultural production grown primarily for sale to hold a fertilizer certificate.



# What does Senate Bill 150 require?



- Needed if fertilizer is applied to more than 50 acres of agricultural production grown primarily for sale.
- Fertilizer is defined as a material which contains a recognized plant nutrient element. Does not include lime, limestone, marl, unground bone, water, residual farm products, animal or vegetable manures unless mixed with fertilizer materials or **distributed with a guaranteed analysis**
- Not needed if it is a crop that is raised for livestock on the farm.
- Not needed for fertilizer used in-row through the planter.



# Fertilizer Certificate is not required if:

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- Apply fertilizer to less than 50 Acres
- Produce a crop primarily for **livestock feed**
- Use only start-up fertilizer through the planter
- Hire a **custom applicator** to apply fertilizer for you
  - CA's responsibility to be certified & keep the fertilization records



# What does this look like for farmers?

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- Record keeping requirements





# Recordkeeping Requirements

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Within 24 hours of application, record:

- The name of the individual who applied the fertilizer
- The name of fertilizer certificate holder
- The date of application
- The place of application- Location (field ID, farm)

# Recordkeeping Requirements

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Within 24 hours of application, record:

- **The number of acres applied**
- The rate of application of fertilizer. (example: lbs./A)
- **The total amount of fertilizer applied, by weight or volume.**
- The analysis of the fertilizer (such as 11-52-0)

# Recordkeeping Requirements

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Within 24 hours of application, record:

- The soil conditions at the time of the application.
- The type of application method (surface-applied, incorporated, injected, etc.)
- The weather conditions at the time of the application, including temperature and precipitation.
- The weather forecast for day following application
- For surface applications only: was the land frozen or snow covered at the time of the application?



# Short Turn Around for meeting Senate Bill 150

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- Turn around required within about 2.5 years for farmers to receive the certification September 30, 2017.
- There is no difference between “private” and “commercial” fertilizer applicators.

# Record Keeping Example

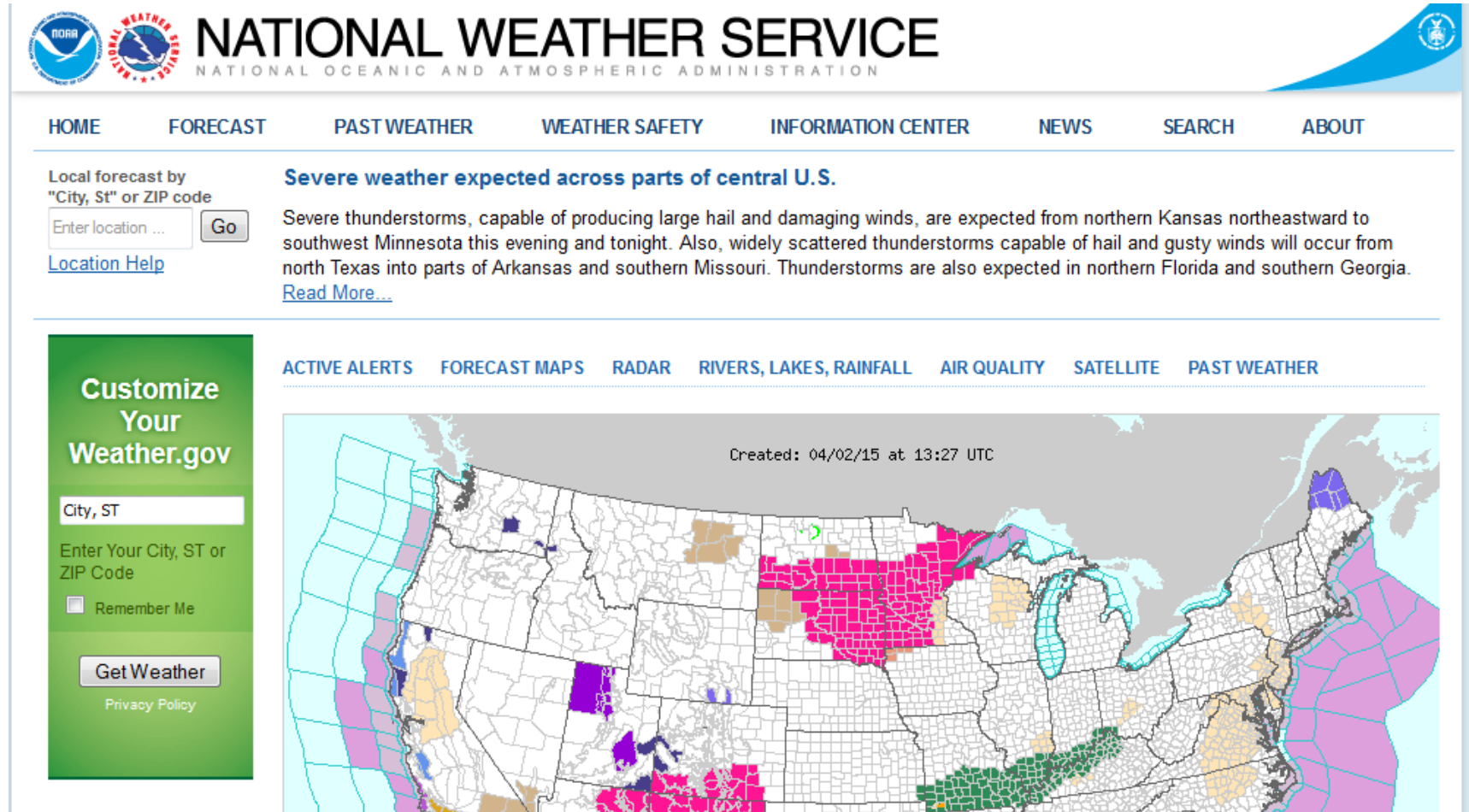
Ohio Agricultural Fertilizer Applicator Recordkeeping Form

Maintain records for 3 years from date of application									
<b>Who:</b> Name of certificate holder:									
Name of Applicator (if different than above):									
<b>When:</b> (mm/dd/yyyy)									
Application date									
<b>Where:</b>									
Location									
<b>What:</b>									
Fertilizer analysis									
Rate applied									
Number of acres applied									
Total amount of fertilizer applied									
Application method									
<b>Application conditions:</b>									
Soil conditions									
Air temperature									
Precipitation									
Soil frozen or snow covered (Y/N)									
<b>Weather forecast:</b>									
24 hour forecast following application									
<b>Notes:</b>									

# There is a little more than just filling out the example record

- Getting weather records:  
<http://weather.gov>
- Must include a 24 hour forecast of precipitation
- Can't get this record after the fact
- Required for each zip code in which you are applying

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The screenshot shows the National Weather Service website. At the top, there are logos for NOAA and the National Weather Service, followed by the text "NATIONAL WEATHER SERVICE" and "NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION". Below this is a navigation bar with links: HOME, FORECAST, PAST WEATHER, WEATHER SAFETY, INFORMATION CENTER, NEWS, SEARCH, and ABOUT. The main content area features a "Local forecast by 'City, St' or ZIP code" section with a text input field, a "Go" button, and a "Location Help" link. To the right of this is a headline "Severe weather expected across parts of central U.S." with a sub-headline "Severe thunderstorms, capable of producing large hail and damaging winds, are expected from northern Kansas northeastward to southwest Minnesota this evening and tonight. Also, widely scattered thunderstorms capable of hail and gusty winds will occur from north Texas into parts of Arkansas and southern Missouri. Thunderstorms are also expected in northern Florida and southern Georgia." and a "Read More..." link. Below the headline is a map of the United States with a color-coded forecast overlay. The map is titled "Created: 04/02/15 at 13:27 UTC". On the left side of the map, there is a green sidebar with the text "Customize Your Weather.gov" and a form with fields for "City, ST", "Enter Your City, ST or ZIP Code", a "Remember Me" checkbox, a "Get Weather" button, and a "Privacy Policy" link.



# The farmers have questions.

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TRUE or FALSE

- Are there any legal penalties for not following the law?
- I can do everything right according to the law and still face damage charges.

**True or False: Are there any legal penalties for not following the law?**

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**TRUE – Ohio Department of Agriculture via The Division of Soil and Water can fine up to a felony 3.**

**True or False: I can do everything right according to the law and still face damage charges?**

**TRUE – Examples are the fish kill issue when manure or commercial fertilizer get into the water. (Waters of the State). These cases are turned over to Ohio EPA. Fines will be assessed.**

# Fertilizer Inspections

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- ODA is conducting routine Fertilizer Applicator Licensing & Records inspections.
- Fertilizer complaints filed with the ODA Reynoldsburg office alleging a possible violation will be investigated
- The inspector will issue a Notice of Inspection and their credentials during a Fertilizer inspection or complaint investigation.
- Ideally 120 investigations per inspector per year.
- Pesticide Records will be inspected additionally if you are randomly selected for a Fertilizer Inspection.



# Enforcement

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1. Conduct a non-certified applicator inspection.
2. Issue a formal written notice of warning.
3. Refuse to License or Certify Applicant.
4. Initiate Litigation/Court Action.
5. Initiate Criminal Charges.

# Ohio Misdemeanor Penalties

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Classification	Confinement	Maximum Fine
Misdemeanor 1 (M1)	Maximum Sentence of 180 days	\$ 1,000
Misdemeanor 2 (M2)	Maximum Sentence of 90 days	\$ 750
Misdemeanor 3 (M3)	Maximum Sentence of 60 days	\$ 500
Misdemeanor 4 (M4)	Maximum Sentence of 30 days	\$ 250

# Western Lake Erie Basin Penalties

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Classification	Maximum Fine
Minor Violation	Up to \$ 2,000
Major Violation	Up to \$10,000

# Affirmative Defense for Private Civil Action. Three Conditions:

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1. Fertilizer applicator is **certified** or is applying fertilizer under the direct supervision of certified applicator
2. Fertilizer application **records** maintained
3. The fertilizer has been applied according to and in substantial compliance with a **Voluntary Nutrient Management Plan (VNMP)**
  - VNMPs submitted for approval every five years to the Soil and Water Conservation District or ODA director's designee





# And then this.....

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# This led to Senate Bill 1

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- New regulations for manure and fertilizer application started on July 3, 2015
- Legislation affects nitrogen and phosphorus application whether applied as manure or fertilizers
- Regulations are targeted specifically to define watersheds that encompass the Western Lake Erie Basin (WLEB)

# Fertilizer Application Restrictions (WLEB)

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For applications of fertilizer in the Western Basin, a person may not apply fertilizer, as defined as nitrogen or phosphorus, under these conditions:

- On snow-covered or frozen soil – OR –
- When the top two inches of soil are saturated from precipitation – OR –
- In the granular form when the local weather forecast for the application area contains a greater than 50% chance of precipitation exceeding one inch in a twelve-hour period, UNLESS

# UNLESS

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- The fertilizer is injected to the ground
- Incorporated within 24 hours of surface application
- Applied to a growing crop
  - Growing crops vary by season
    - **Summer – green plant that will be harvested or that was planted as a cover crop**
    - **Winter – A growing crop is any plant that will be harvested or that was planted as a cover crop and that will not winter kill**



# Manure Application Restrictions (WLEB)

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A person may not surface apply manure in the WLEB under any of the following circumstances:

- On snow-covered or frozen soil – OR –
- When the top two inches of soil are saturated from precipitation – OR –
- When the local weather forecast for the application area contains greater than a 50% chance of precipitation exceeding one-half inch in a 24 hour period UNLESS

# UNLESS

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- The manure is injected to the ground
- Incorporated within 24 hours of surface application
- Applied to a growing crop
  - Growing crops vary by season
    - **Summer – green plant that will be harvested or that was planted as a cover crop**
    - **Winter – A growing crop is any plant that will be harvested or that was planted as a cover crop and that will not winter kill**
- If in the event of an emergency, the chief of the division of soil and water resources or the chief's designee provides written consent and the manure application is made in accordance with procedures established in the US Department of Agriculture NRCS practice Standard Code 590 prepared for the state

# Facilities currently permitted as Confined Animal Feeding Operations (CAFO) and Certified Livestock Managers (CLM)

- Must continue more restrictive criteria based on soil hydrologic classification noted in the facility permit.



# Farmers are trying to follow the regulations

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# Confusion and More Proposed Regulations

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Senate Bill 1 has been proposed to be mandated statewide

# Confusion and More Proposed Regulations

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Late September 2018 WLEB was proposed to be regulated the same as the Grand Lake St. Mary's (restrictions on no manure application from November 15 to March 1 – no exception)

# Confusion and More Proposed Regulations

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- Changes to the Grand Lake St. Mary's Bill
  - Requirements moved additionally to commercial fertilizer (no application dates)
  - Mandatory Comprehensive Nutrient Management Plans within 2 years for all of WLEB to be renew every 5 years (over 7740 plans would need to be written)

# Confusion and More Proposed Regulations

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- LEBOR – Lake Erie Bill of Rights (Last 3 weeks)
  - Gives Lake Erie and the Lake Erie Watershed, the right to exist, flourish and naturally evolve, including features, organisms, soils and terrestrial/aquatic sub ecosystems
  - States the city of Toledo citizens possess the right to a clean and healthy environment, including a clean Lake Erie

# Confusion and More Proposed Regulations

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- LEBOR – Lake Erie Bill of Rights (Last 3 weeks)
  - Invalidates any permit or license (state or federal) within the city of Toledo that would violate these rights
  - The city of Toledo, or any citizen of Toledo, may enforce these rights by suing any business or government through the Lucas County Court of Common Pleas, and the city/citizen shall have the right to recover all costs of litigation without limitation;

# Confusion and More Proposed Regulations

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- LEBOR – Lake Erie Bill of Rights (Last 3 weeks)
  - Damages will be measured by the cost of restoring the Lake Erie ecosystem and its parts to at least their status immediately before the beginning of the act that resulted in injury and shall be paid to the city of Toledo to be used exclusively for the restoration of Lake Erie.



# What questions do you have?

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Thank You!!

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