



STATUTORY INSTRUMENTS.

S.I. No. 125 of 2012



EUROPEAN COMMUNITIES (AERIAL FERTILISATION)
(FORESTRY) REGULATIONS 2012

(Prn. A12/0606)

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I, SIMON COVENEY, Minister for Agriculture, Food and the Marine in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving further effect to Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006¹ in so far as that directive relates to the aerial fertilisation of forests, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Aerial Fertilisation) (Forestry) Regulations 2012.

Interpretation

2. (1) In these Regulations—

“aquatic zone” means a permanent or seasonal river, stream or lake shown on an Ordnance Survey 1:5000 scale map;

“authorised officer” means—

(a) a person appointed under section 11 of the Forestry Act 1946 (No. 13 of 1946), or

(b) a member of the Garda Síochána,

“Directive” means Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006;

“European site” has the same meaning as in Regulation 2 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011);

“Minister” means Minister for Agriculture, Food and the Marine;

“net hectare” means the total area of forestry subject to an application for an aerial fertilisation licence that does not include exclusion zones and untreated areas.

Licence procedures

3. (1) A person shall not engage or cause or permit another person to engage in the aerial fertilisation of forests other than in accordance with a licence (“aerial fertilisation licence”).

¹O.J. L064, 04.03.2006 p. 52

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 17th April, 2012.*

(2) An owner or person seeking an aerial fertilisation licence shall submit an application to the Minister in a manner determined by the Minister and shall be accompanied by a fee, if any.

(3) The Minister may grant an aerial fertilisation licence, attach conditions to the licence, vary a condition, insert a new condition, revoke an aerial fertilisation licence or refuse an application.

(4) Subject to paragraph (5), a person may only engage in aerial fertilisation between 1 April and 31 August in any year.

(5) The Minister may, if he or she is satisfied that exceptional circumstances so warrant, grant an aerial fertilisation licence for a period outside of the period specified in paragraph (4).

(6) A person engaged in aerial fertilisation shall not, in respect of the fertiliser type used, exceed the parameters set out in the Schedule.

(7) An aerial fertilisation licence shall be valid for a period that the Minister determines and the period shall be specified on the licence.

Information to be provided with application for licence

4. (1) Without prejudice to the generality of Regulation 3(2), a person submitting an application for an aerial fertilisation licence shall—

- (a) include details of the location, townland, Electoral Division and number reference of the land to which the application relates,
- (b) include an Ordnance Survey map to a scale of 1:5000 or other scale agreed by the Minister which shall clearly show the following details—
 - (i) the total area to be treated,
 - (ii) all exclusion zones,
 - (iii) all fertiliser storage areas,
 - (iv) all aquatic zones, and
 - (v) abstraction points of known sources of water for human consumption,
- (c) provide site details, including—
 - (i) soil type,
 - (ii) site elevation,
 - (iii) site aspect,
 - (iv) site exposure, and

(v) site vegetation type, and

(d) include—

(i) commercial name of the fertiliser,

(ii) the chemical make up of the fertiliser,

(iii) the proposed concentration,

(iv) the proposed rate of application,

(v) the results of a foliar analysis of the trees, and

(vi) the recommendations from a competent person outlining, the proposed management prescription based on foliar analysis, the type of fertiliser to be used, the concentration of fertiliser and the proposed rates of fertiliser application per net hectare.

(2) The Minister may refuse an application if the person applying fails to supply all the information that the Minister may require to decide on the matter.

Consultation

5. (1) The Minister may, following receipt of an application for an aerial fertilisation licence, issue a notice including any of the information mentioned in paragraph (2) to—

(a) a local authority as defined under section 2 of the Local Authority Act 2001 (No. 37 of 2001),

(b) Inland Fisheries Ireland,

(c) the Minister for Arts, Heritage and the Gaeltacht, or

(d) any other person the Minister considers appropriate.

(2) A notice issued by the Minister under paragraph (1) shall include a copy of the application together with a map of the site on which the aerial fertilisation is proposed and shall state—

(a) the reference number of the application,

(b) the name and address of the applicant,

(c) the location or postal address (including, where appropriate, the name of the relevant townland or townlands) to which the application relates,

(d) the results of a foliar analysis and the recommendations from a competent person outlining, the proposed management prescription based on foliar analysis, the type of fertiliser to be used, the concentration of fertiliser and the rates of fertiliser application per net hectare, and

(e) the date of receipt of the application.

(3) A person to whom a notice is issued under paragraph (1) may, within 28 days from the date of the notice, make a submission to the Minister and the Minister shall take account of the submission in making his or her decision on the application.

Protection of european sites

6. (1) If the Minister receives an application for an aerial fertilisation licence where the proposed operation is likely to have a significant effect on a European site, either alone or in combination with other operations or activities, the Minister shall cause an assessment to be made of the implications for the site in view of that site's conservation objectives.

(2) Having regard to the conclusions of the assessment under paragraph (1), the Minister may grant an aerial fertilisation licence, attach conditions to the licence, vary a condition or insert a new condition to protect the integrity of the site, only after having ascertained that it will not adversely affect the integrity of the site.

Refusal of an application

7. (1) Without prejudice to the generality of Regulation 3(3), the Minister may refuse an application or revoke an aerial fertilisation licence if the Minister is satisfied that—

- (a) the applicant or licence holder has committed an offence relating to animals, plants or public health or to the environment,
- (b) the applicant or licence holder has failed or the Minister believes may fail to comply with an aerial fertilisation licence or a condition set out in an aerial fertilisation licence,
- (c) the applicant or licence holder has failed or the Minister believes may fail to comply with published guidelines and good forest practice,
- (d) aerial fertilisation, in the Minister's view, is not appropriate for the management of the forest in question,
- (e) in relation to an application, information provided is false or misleading in a material respect,
- (f) the applicant or licence holder, in the opinion of the Minister, is not a fit and proper person to be granted an aerial fertilisation licence,
- (g) the application is in relation to fertiliser that does not comply with the criteria set out in the Schedule or that exceeds the application rates set out in the Schedule,
- (h) it is necessary in order to secure compliance with the quality standards set out in the European Communities Environmental Objectives (Surface Water) Regulations 2009 (S.I. No. 272 of 2009),

- (i) it is necessary for the protection of human health, plant health, animal health or welfare or the environment, or
 - (j) the application is not accompanied by the appropriate fee.
- (2) Subject to paragraph (3), if the Minister proposes to refuse an application for or revoke an aerial fertilisation licence, the Minister shall—
- (a) notify the applicant or licence holder of the proposal and the reasons for the proposal, and that he or she may make representations in relation to the proposal to the Minister within 14 days of notification,
 - (b) consider a representation made before deciding whether to proceed with, modify or annul the proposal, and
 - (c) notify the applicant or licence holder of the decision and the reasons for the decision.
- (3) The Minister may revoke an aerial fertilisation licence with immediate effect where the Minister believes that there is a risk to animals, plants or public health or to the environment.
- (4) Where the Minister revokes an aerial fertilisation licence under paragraph (3) the Minister shall—
- (a) notify the licence holder of his or her decision and the reason for such decision,
 - (b) advise the licence holder that he or she may make representations within 14 days of the notification, and
 - (c) Consider any representations within 14 days before confirming, amending or annulling the decision to revoke the aerial fertilisation licence.

Exclusion zones

8. A person shall not carry out aerial fertilisation within—

- (a) 100 metres of the abstraction point of a source of water intended for human consumption,
- (b) 50 metres of an aquatic zone,
- (c) unless with the written permission of the owner or occupier or the Minister for Arts, Heritage and the Gaeltacht, 30 metres of—
 - (i) a European site,
 - (ii) a dwelling house, and
 - (iii) non-forested land;

- (d) 15 metres of a road,
- (e) at or on a recorded monument or place to which Section 12 of the National Monuments (Amendment) Act 1994 (No. 17 of 1994) refers.

Fees

9. (1) The Minister may set and charge a fee for an application for an aerial fertilisation licence.

(2) The Minister shall not consider an application for an aerial fertilisation licence unless it is accompanied by the appropriate fee (if any).

(3) Monies received under this Regulation shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

Authorised officer

10. (1) An authorised officer may enter on and survey any land for the purpose of ascertaining whether it is suitable for aerial fertilisation and take such samples of plants, foliage, soil or other things that assist the Minister in the good administration of the aerial fertilisation.

(2) An authorised officer, who enters on any land shall, if so required by the occupier of that land, produce his or her authority to such occupier.

(3) A person who obstructs or interferes with an authorised officer in the exercise of any function conferred on him or her by this Regulation commits an offence.

Forgery

11. (1) A person shall not forge or alter, or utter knowing it to be forged or altered with intent to defraud or deceive, information for the purposes of a license (hereafter in this Regulation referred to as “forged or altered data”).

(2) A person shall not have, without lawful authority, in his or her possession or control forged data or altered data.

Offences

12. (1) A person who, by act or omission, contravenes Regulations 3(1), 8, 10(3), 11 or 12(3) or a condition of an aerial fertilisation licence or aids or abets such a contravention commits an offence and is liable—

(a) on summary conviction to a Class A fine or to imprisonment for a term not exceeding 3 months or to both, or

(b) on conviction on indictment to a fine not exceeding €500,000 or to imprisonment for a term not exceeding one year or to both.

(2) Proceedings in respect of a summary offence under these Regulations may be prosecuted by the Minister.

(3) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(4) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with functions of management as if the member is a director or manager of the body corporate.

Revocation and saver

13. (1) The European Communities (Aerial Fertilisation) (Forestry) Regulations 2006 (S.I. No. 592 of 2006), as amended by the European Communities (Aerial Fertilisation) (Forestry) (Amendment) Regulations 2007 (S.I. No. 790 of 2007) are revoked.

(2) An aerial fertilisation licence issued under the Regulations revoked by paragraph (1) that is in force immediately before the making of these Regulations remains in force and is considered to be an aerial fertilisation licence issued under these Regulations.

SCHEDULE

REQUIREMENTS AS TO THE MANNER OF APPLICATION OF FERTILISER

The application of fertiliser shall be limited to the type, the concentrations and the application rates contained in the following table:

Fertiliser Type	% P	% N	% K	Maximum rate per net hectare
Granulated Rock Phosphate	11-12%	—	—	350 kg
Granulated Urea	—	46%	—	350 kg
Muriate of Potash	—	—	50%	250 kg



GIVEN under my Official Seal,
4 April 2012.

SIMON COVENEY,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These regulations provide for a statutory license system by the Minister for Agriculture, Food and the Marine for the aerial application of fertilisers to forests. They revoke and consolidate previous regulations.

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