

# S.I. No. 592/2006 — European Communities (Aerial Fertilisation) (Forestry) Regulations 2006

S.I. No.592 of 2006

## European Communities (Aerial Fertilisation) (Forestry) Regulations 2006

I, Mary Coughlan, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Council Directive No. 76/464/EEC of 4 May 1976<sup>1</sup> 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 2006.
Interpretation	<div>2. In these Regulations -</div> <div>“aquatic zone” means a permanent or seasonal river, stream or lake shown on an Ordnance Survey 6 inch map;</div> <div>“authorised officer” means a person appointed under Regulation 9 or a member of the Garda Síochána;</div> <div>“net hectare” means the total area of forestry that does not include exclusion zones and untreated areas.</div> <div>“European site” means</div> <div>(a) a site (until the adoption, in respect of the site, of a decision by the European Commission under Article 21 of Council Directive No. 92/43/EEC of 21 May 1992<sup>2</sup> for the purposes of the third paragraph of Article 4(2) of that Directive)—</div> <div>(i) notified for the purposes of Regulation 4 of the European Communities (Natural Habitats) Regulations 1997 ( S.I. No. 94 of 1997 ), subject to any amendments made to it by virtue of Regulation 5 of those Regulations,</div> <div>(ii) details of which have been transmitted to the Commission in accordance with Regulation 5(4) of the European Communities (Natural Habitats) Regulations 1997, or</div> <div>(iii) added by virtue of Regulation 6 of the European Communities</div>

(Natural Habitats) Regulations 1997 to the list transmitted to the Commission in accordance with Regulation 5(4) of the said Regulations,

- (b) a site adopted by the European Commission as a site of Community importance for the purposes of Article 4(2) of Council Directive No. 92/43/EEC in accordance with the procedure laid down in Article 21 of that Directive,
- (c) a special area of conservation within the meaning of the European Communities (Natural Habitats) Regulations 1997, or
- (d) an area classified pursuant to Article 4 (1) or (2) of Council Directive No. 79/409/EEC of 2 April 1979<sup>3</sup> on the conservation of wild birds;

“Minister” means the Minister for Agriculture and Food.

### **Licence Procedures**

- 3.
  - (1) A person shall not engage in the aerial fertilisation of forests other than under and in accordance with a licence (“aerial fertilisation licence”).
  - (2) An application for an aerial fertilisation licence shall be in a form, contain the particulars and be accompanied by any material that the Minister may determine.
  - (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) An aerial fertilisation licence is valid for a period that the Minister determines and the period shall be specified on the licence.

### **Information to be provided with an application for a licence**

- 4.
  - (1) Without prejudice to the generality of Regulation 3(2), an application for an aerial fertilisation licence shall -
    - (a) contain the name, address and telephone number of the applicant and, if different, any address to which correspondence relating to the application should be sent and, if the applicant is a body corporate, the address of its registered principal office,
    - (b) contain the location townland, Electoral Division and the Ordnance Survey 6 inch Map number reference of the land to which the application relates,
    - (c) include a map which shall include 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,
- (d) provide site details, including -
- (i) soil type,
  - (ii) site elevation,
  - (iii) site aspect,
  - (iv) site exposure,
  - (v) site vegetation type, and
- (e) include the results of a foliar analysis and the recommendations from a competent person outlining, the type of fertiliser to be used, the concentration of fertiliser and the proposed rates of fertiliser application per net hectare.
- (2) If the Minister considers that an application for a licence does not comply with paragraph (1), he or she may, having regard to the extent of the failure to comply with the said requirements, by notice in writing—
- (a) inform the applicant of such failure and that the application cannot be considered by the Minister, or
  - (b) require the applicant, within a period specified by the Minister, to take the steps, or to furnish the further particulars, plans, drawings or maps, necessary and, if the applicant fails to comply with a requirement under this subparagraph, the Minister may, as he or she considers appropriate having regard to the extent of the failure, inform the applicant, by notice in writing, of such failure and that the application cannot be considered by the Minister.

**Further  
Information**

5. (1) If the Minister receives an application for an aerial fertilisation licence he or she may, by notice in writing, require the applicant—
- (a) to submit any further information, particulars, plans, drawings or maps relative to the application which the Minister considers necessary,
  - (b) to produce any evidence which the Minister may reasonably require to verify any particulars or information given by the

applicant in or in relation to the application.

(2) If there is a failure to comply with a requirement under paragraph (1) within 28 days of the date of notice of the requirement, the Minister may, if he or she thinks fit-

- (a) proceed with the consideration of the application and issue a notification in the absence of the particulars, plans, drawings, maps, information or evidence specified in the requirement, or
- (b) inform the applicant, by notice in writing, that the application cannot be considered.

## **Refusal of an application**

- 6. (1) Without prejudice to the generality of Regulation 3(3), the Minister may refuse an application or revoke an aerial fertilisation licence if he or she is satisfied that -
  - (a) the applicant or licence holder has committed an offence, whether he or she has been convicted or not, relating to animal, plant or public health or to the environment,
  - (b) the applicant or licence holder has failed to comply with a condition of an aerial fertilisation licence,
  - (c) the applicant or licence holder has failed to comply with published guidelines and good forest practice,
  - (d) aerial fertilisation is not appropriate for the management of the forest in question,
  - (e) in relation to an application, information required has not been furnished or information that is false or misleading in a material respect has been furnished,
  - (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.
- (2) Without prejudice to the generality of Regulation 3(3), the Minister shall refuse an application or revoke an aerial fertilisation licence if he or she is satisfied that -
  - (a) it is necessary in order to secure compliance with the quality standards prescribed in the Local Government (Water Pollution) Act 1977 (Water Quality Standards for Phosphorous) Regulations 1998 ( S.I. No. 258 of 1998 ),
  - (b) it is necessary for the protection of human health, plant health, animal health or welfare or the environment, or
  - (c) it is necessary, ancillary or supplementary for an act of the

institutions of the European Community (including an act cited in the preamble to these Regulations) to have full effect.

- (3) If the Minister proposes to refuse an application for or revoke an aerial fertilisation licence, he or she shall-
  - (a) notify the applicant or aerial fertilisation 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 duly made before deciding whether to proceed with, modify or annul the proposal, and
  - (c) notify the applicant or aerial fertilisation licence holder of the decision and the reasons for the decision.

## Consultation

7.

- (1) If the Minister receives an application for an aerial fertilisation licence (other than an application in respect of which a notice in accordance with Regulations 4(2) and 5(2)(b) has been sent) a notice shall be sent in accordance with paragraph (2) as soon as may be after receipt of the application —
  - (a) if it appears to the Minister that the proposed application might have significant effects in relation to water quality - to the appropriate local authority, the appropriate Fisheries Board and the appropriate River Basin District Board,
  - (b) if it appears to the Minister that the proposed application might have significant effects in relation to nature conservation, to the Minister for the Environment, Heritage and Local Government.
- (2) Notice given by the Minister pursuant to 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 or the licensee, as the case may be,
  - (c) the location or postal address (including, where appropriate, the name of the relevant townland or townlands) to which the application relates,
  - (d) include the results of a foliar analysis and the recommendations from a competent person outlining, the type of fertiliser to be used, the concentration of fertiliser and the rates of fertiliser application per net hectare,
  - (e) the date of receipt of the application, and

- (f) that any submission or observation made to the Minister in relation to the application within 28 days of the date of the notice will be taken into account by the Minister in making his or her decision on the application.

## **Protection of European Sites**

8. (1) If the Minister receives an application for an aerial fertilisation licence (other than an application in respect of which a notice in accordance with Regulations 4(2) and 5(2)(b) has been sent) and it appears to him or her that the proposed operation is likely to have a significant effect on a European Site, either alone or in combination with other operations or activities, he or she 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 and insert a new condition, only after having ascertained that it will not adversely affect the integrity of the site.

## **Appointment of Authorised Officers**

9. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations as may be specified in the instrument.
- (2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.
- (3) An appointment as an authorised officer ceases -
  - (a) if it is terminated pursuant to paragraph (2),
  - (b) if it is for a fixed period, on the expiry of that period, or
  - (c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.
- (4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.
- (5) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, an officer of Customs and Excise or a member of the Garda Síochána shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to the person.

## **Functions of Authorised Officers**

10. (1) If an authorised officer has reasonable cause to suspect that -

(a) fertiliser, a document or thing relating to the aerial fertilisation of forests is present, was present or may be present on a premises, or

(b) an offence is being or has been committed under these Regulations,

the authorised officer may enter the premises and he or she may -

(i) search the premises,

(ii) stop a person, vehicle, vessel or container

(iii) board and search a vehicle, vessel or container,

(iv) search a person, where the authorised officer considers it necessary,

(v) examine fertiliser, a vehicle, vessel, container or other thing that may consist of or contain fertiliser,

(vi) take, without payment, samples of fertiliser or other thing or an article, substance or liquid as he or she may reasonably require and carry out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,

(vii) seize and detain (for so long as is necessary) any fertiliser, document or thing relating to the aerial fertilisation of forests, vehicle, vessel or container,

(viii) require the production of a document or thing relating to aerial fertilisation of forests, a vehicle, vessel or container,

(ix) retain a document or thing (for so long as is necessary),

(x) dispose of, or require the owner or person in charge of or in possession of fertiliser to deal with or dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with fertiliser) in a manner that the authorised officer sees fit,

(xi) require the name and address of a person and the name and address of any other relevant person including the person to whom fertiliser is being delivered or to who is causing it to be delivered,

(xii) require of a person the ownership, identity and origin of the fertiliser, or

(xiii) mark or otherwise identify fertiliser or specimen taken under subparagraph (vi).

- (2) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 11 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) relates is being or is likely to be destroyed or disposed of.
- (3) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.
- (4) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.
- (5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of fertiliser as may be specified by the authorised officer.
- (7) Nothing in this Regulation operates to prejudice any power to search, or to seize or detain property, which may, apart from these Regulations, be exercised by a member of the Garda Síochána or an officer of Customs and Excise.
- (8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

## **Search warrant**

11. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting -
  - (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
  - (b) there is or was aerial fertiliser or other thing made, used or adapted for use (including manufacture and transport) in connection with the aerial fertilisation of forest, or
  - (c) a document or other record related to a thing to which subparagraph (a) refers is or may be on the premises,

the judge may issue a search warrant.
- (2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised



officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.

- (3) If a premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

## Investigations

12. (1) The Minister may carry out, or arrange to have carried out, such investigations as he or she considers necessary to enable him or her to decide to grant, with or without conditions, or refuse to grant or revoke an aerial fertilisation licence.
- (2) The Minister may carry out, or arrange to have carried out, such investigations as he or she considers necessary to ascertain whether or not aerial fertilisation has been carried out in accordance with the conditions of a licence, published guidelines and good forest practice.

## Aerial Fertilisation Licensing Period and Parameters

13. (1) Aerial fertilisation may only take place between 1 April and 31 August in any year.
- (2) The Minister may, if he or she is satisfied that exceptional circumstances so warrant, grant an aerial fertilisation licence valid for a period outside of the period specified in paragraph (1).
- (3) A person engaged in aerial fertilisation shall not, in respect of the fertiliser type used, exceed the parameters set out in the Schedule.

## Exclusion zones

14. (1) Aerial fertilisation shall not take place 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 relevant Statutory Body, 30 metres of -
    - (i) a European site,
    - (ii) an area the subject of a notice under section 16(2)(b) of the [Wildlife \(Amendment\) Act 2000](#) (No. 38 of 2000),
    - (iii) an area designated as a natural heritage area under [section 18](#)

of the [Wildlife \(Amendment\) Act 2000](#) ,

- (iv) land established or recognised as a nature reserve within the meaning of section 15 or 16 (as amended by sections 26 and 27 of the [Wildlife \(Amendment\) Act, 2000](#) ) of the [Wildlife Act 1976](#) (No. 39 of 1976),
  - (v) land designated as a refuge for flora or as a refuge for fauna under section 17 (as amended by [section 28](#) of the [Wildlife \(Amendment\) Act 2000](#) ) of the [Wildlife Act 1976](#) ,
  - (vi) a dwelling house, and
  - (vii) other non-forested land;
- (d) 15 metres of a public, private or forest road.

(2) Aerial fertilisation shall not take place at or on a recorded monument or place as provided for under Section 12 of the National Monuments (Amendment) Act 1994 (No. 17 of 1994).

(3) Aerial fertilisation shall not take place -

- (a) on land that is not fully vegetated either with a dense ground vegetation or with trees whose branches are in close proximity (branches within 1 metre of touching) or with a full forest canopy,
- (b) on land that is waterlogged,
- (c) on land that is flooded or likely to flood,
- (d) on land that is snow-covered or frozen,
- (e) during heavy rain,
- (f) if heavy rain is forecast within 48 hours,
- (g) if the ground slopes steeply and, taking into account factors such as proximity to waters, soil condition, ground cover and rainfall, there is significant risk of causing water pollution,
- (h) on sites with drainage systems that could facilitate unacceptably high rates of surface water run off,
- (i) unless with the specific written agreement of the Minister of the Environment, Heritage and Local Government, on;
  - (i) a European site,

- (ii) an area the subject of a notice under section 16(2)(b) of the Wildlife (Amendment) Act 2000 (No. 38 of 2000),
- (iii) an area designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000 ,
- (iv) land established or recognised as a nature reserve within the meaning of section 15 or 16 (as amended by sections 26 and 27 of the Wildlife (Amendment) Act 2000 ) of the Wildlife Act 1976 (No. 39 of 1976), or
- (v) land designated as a refuge for flora or as a refuge for fauna under section 17 (as amended by section 28 of the Wildlife (Amendment) Act 2000 ) of the Wildlife Act 1976 ,
- (j) at times of poor visibility, such as in low cloud or fog,
- (k) during high winds, or
- (l) after daylight hours.

## **Fees**

15. (1) The Minister may, from time to time, 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) A fee payable pursuant to this Regulation may be recovered by the Minister from the person by whom it is payable as a simple contract debt in a court of competent jurisdiction.
- (4) 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.
- (5) The Public Offices Fees Act 1879 (42 & 43 Vict. Cap 58) does not apply to a fee charged pursuant to this Regulation.

## **Offences**

16. (1) A person who contravenes Regulations 3(1), 13(1), 13(3) or 14 or a condition of an aerial fertilisation licence commits an offence and is liable on conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or to both.
- (2) An offence under these Regulations may be prosecuted by the Minister.
- (3) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purported 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 he or she was guilty of the offence.

SCHEDULE

Requirements as to the manner of application of fertiliser

Notwithstanding Regulation 4(1)(e), 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 hectare
Granulated Rock Phosphate	11-16%	-	-	350 kg
Granulated Urea	-	46%	-	350 kg
Muriate of Potash	-	-	50%	250 kg

GIVEN under my Official Seal

24<sup>th</sup> November 2006



Mary Coughlan

Minister for Agriculture and Food

EXPLANATORY NOTE

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

These Regulations provide for the introduction of a statutory licence system by the Minister for Agriculture and Food for the aerial application of fertilisers to forests.

<sup>1</sup> OJ No. L 129, 18.5.1976, p.23

<sup>2</sup> OJ No. L 206, 22.7.1992, p.7

<sup>3</sup> OJ No. L 103, 25.4.1979, p.1

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