



Decree of the Flemish Government amending the Flemish Environmental Permits Regulation (VLAREME) of 28 October 2016, as regards the declaration and the register for fertiliser and fertilisation

Legal bases

This Decree is based on:

- the Special Law of 8 August 1980 on the reform of the institutions, Article 20, as amended by the Special Law of 16 July 1993;
- the Manure Decree of 22 December 2006, Article 4(3), inserted by the Decree of 12 December 2008 and amended by the Decree of 12 June 2015, Article 13(10), replaced by the Decree of 12 June 2015 and amended by the Decree of 24 May 2019, Article 14(11), replaced by the Decree of 24 May 2019, Article 23(7), replaced by the Decree of 12 June 2015, Article 24(2), amended by the Decrees of 28 February 2014 and 24 May 2019, (5), amended by the Decree of 12 June 2015, and (6), inserted by the Decree of 24 May 2019.

Procedural requirements

The following procedural requirements have been met:

- The Inspectorate of Finance issued its opinion on 6 May 2024;
- The Flemish Supervisory Committee for processing personal data gave opinion 2024/053 on 19 June 2024;
- The provisions contained in this draft were communicated to the European Commission on ..., pursuant to Article 5 of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services;
- The Data Protection Authority issued Opinion No 94.2024 on 26 September 2024;
- The Council of State issued Opinion No xxxxx/x [opinion number] on ... [date], pursuant to Article 84(1)(1)(2°) of the Council of State Acts, coordinated on 12 January 1973.

Initiator

This Decree is proposed by the Flemish Minister for Environment and Agriculture

Following deliberations,

THE FLEMISH GOVERNMENT HEREBY DECREES THE FOLLOWING:

Article 1. In the VLAREME of 28 October 2016, last amended by the Flemish Government Decree of 28 April 2023, an Article 2.2.(1)(4) is introduced, with the following text:

'Article 2.2.1.4. §1. By way of derogation from Article 2.2.1.1 to 2.2.1.3, the provisions of this Article shall apply to the register for producers, distributors, importers or exporters of fertilisers referred to in Article 2.2.3.1, and to the fertiliser register for farmers referred to in Article 2.2.4.1.

The aforementioned registers are kept via the Internet counter made available by the Manure Bank.

The documents in support of the register shall be kept at the place where the activity subject to registration is carried out. In the case of supporting documents kept digitally, keeping them at the place where the activity subject to registration is carried out shall mean that they can be consulted at the place where the activity subject to registration is carried out.

The documents necessary to support the register shall be kept in such a way that it is clear to which note in the register the documentary evidence in question relates.

The information referred to in Article 2.2.4.1(2)(2), which has not been recorded by the farmer whose holding the parcel in question belongs to, is transmitted by the Manure Bank to the farmer whose holding the parcel in question belongs to. The Manure Bank will pass on the data referred to in Article 2.2.4.1(2)(2), as soon as the data in the single application for the year in question show who the farmer is to whose holding the parcel in question belongs.

Without prejudice to the application of paragraph six, the Minister may stipulate that, for entries in the register relating to fertiliser marketing, the Manure Bank shall pass on the information recorded by a party subject to the register to the other parties involved in the marketing of fertiliser. The Minister may lay down more detailed rules on this matter.'

§2. The register for producers, distributors, importers or exporters of fertilisers referred to in Article 2.2.3.1 shall be completed no later than the second day following the day on which the facts to be entered in the register took place.

By way of derogation from paragraph 1, the register shall be completed no later than the month following the month in which the facts to be entered in the register took place, with regard to the data to be entered in the register for producers, distributors, importers or exporters of fertilisers, as referred to in Article 2.2.3.1, relating to:

- 1° the export of fertilisers. By way of derogation from Article 2.2.3.1(4), the register shall record, for each type of fertiliser, the amount of fertiliser, expressed in kg P2O5, in kg N and in tonnes, exported in the month in question;
- 2° deliveries of up to 100 kg of fertiliser per delivery. By way of derogation from Article 2.2.3.1(1), the register shall record, for each type of fertiliser, the amount

of fertiliser, expressed in kg P2O5, in kg N and in tonnes, delivered in the month in question via deliveries of up to 100 kg per delivery.

§3. The fertiliser register for farmers referred to in Article 2.2.4.1 shall be completed at the following times:

1° with regard to the data to be entered in the trade register referred to in Article 2.2.4.1(1)(2)(2°), no later than the seventh day following the month in which the facts to be entered in the trade register took place;

2° with regard to the data to be entered in the use register referred to in Article 2.2.4.1(1)(2)(1°), no later than the seventh day following the deadline for submission of the single application. By way of derogation, for a use of fertiliser that occurs after the deadline for submission of the single application, the use of fertiliser shall be entered in the use register no later than the seventh day of the month following the month in which the fertiliser was used.

§4. The Minister may determine the detailed rules with regard to the periods and derogations referred to in subsection 2(2) and subsection 3, may extend the situations in which facts must only be entered in the register, no later than the month following the month in which the facts took place, as referred to in subsection 2(2), and may determine which data must be entered in the register, by way of derogation from Article 2.2.3.1 and Article 2.2.4.1. However, this may not concern data other than those already mentioned in Article 2.2.3.1 and Article 2.2.4.1.’.

Article 2. Article 2.2.3.1 of the same Decree, inserted by the Decree of the Flemish Government of 22 December 2017, is amended as follows:

1° between the words ‘the name’ and the words ‘of the party concerned’, the words ‘and the farmer’s or farm’s number’ are inserted;

2° in paragraph 1, point 5° is deleted;

3° in paragraph 2(2°), between the words ‘the name’ and the words ‘the address’, the words ‘and the farmer’s or farm’s number’ are inserted;

4° in paragraph 2, point 6° is deleted;

5° in paragraph 3, point 5° is deleted;

6° in paragraph 4, point 6° is deleted;

7° a paragraph 5 is added, reading:

‘By way of derogation from paragraphs 1 to 4, for the purpose of identifying the provider, producer or recipient of fertilisers that do not have a farm or operation number, the company number of the provider, producer or recipient of fertilisers in question shall be entered in the register.’.

Article 3. A new subsection 4, consisting of Article 2.2.4.1, is added to Chapter 2, Part 2, of the same Decree, amended by the Decree of the Flemish Government of 22 December 2017, reading as follows:

‘Subsection 4. The fertiliser register for farmers

Article 2.2.4.1. §1. In accordance with Article 24(6) of the Manure Decree of 22 December 2006, each farmer, referred to in Article 23(1)(1)(1) of the aforementioned Decree, shall keep, for each calendar year, an artificial fertiliser register.

- The fertiliser register, mentioned in paragraph 1, consists of two parts:
- 1° a register of use in which the use of fertiliser at plot level is recorded in accordance with paragraph 2;
 - 2° a trade register in which the farmer accounts for the fertiliser flows on his holding in accordance with subsection 3.

§2. The farmer shall ensure that the use register referred to in subsection 1(2), records the use of fertiliser on all the agricultural parcels belonging to the holding.

The farmer shall ensure that, for each agricultural parcel of land belonging to the holding, each fertiliser application is recorded. The following information shall be recorded for each use of fertiliser:

- 1° identification of the parcel or parcels on which the fertiliser has been used;
- 2° the date on which the fertiliser was used;
- 3° identification of the type of fertiliser used. This means the composition, expressed in percentage N and percentage P₂O₅ of the fertiliser used and the name of the fertiliser used;
- 4° the amount of fertiliser used, expressed in kilograms or litres.

A note in the register may relate to fertilisation on different parcels of agricultural land only if the fertiliser applied was applied on the same day and spread evenly over the different parcels in question.

By way of derogation from paragraphs 1 to 3, the use of fertiliser need not be recorded in the use register if it concerns a use of fertiliser:

- 1° on a cultivation on growing medium;
- 2° on agricultural land located in area type 0;
- 3° on agricultural land belonging to the holding of a farmer who has an exemption, as referred to in Article 14(6) of the Manure Decree.

The exemption referred to in Article 14(6) of the Manure Decree may be applied for by any farmer on whose holding there is agricultural land, irrespective of the type of area within which the farmer's parcels are located.

By way of derogation from paragraphs 1 to 3, the Minister may determine the manner in which the use of fertilisers on permanently covered agricultural land must be recorded in the use register.

§3. The farmer accounts for the fertiliser flows on the farmer's holding in the trade register referred to in subsection 1(2)(2).

In the trade register, the farmer shall record all fertiliser received on his holding or transferred to a third party.

For each receipt of fertiliser from a third party, the farmer shall record all of the following information:

- 1° the identification of the type of fertiliser received. This means: the composition, expressed in percentage N and percentage P₂O₅, of the fertiliser received and the name of the fertiliser received;
- 2° the amount of fertiliser received, expressed in kilograms or litres;
- 3° the date on which the fertiliser was received on the farmer's holding;
- 4° identification of the holding or farm from which the fertiliser originates.

For each transfer of fertiliser to a third party, the farmer shall record all of the following information:

- 1° identification of the type of fertiliser transferred. This means the composition, expressed in percentage N and percentage P₂O₅, of the transferred fertiliser and the name of the transferred fertiliser;
- 2° the amount of fertiliser transferred, expressed in kilograms or litres;
- 3° the date on which the fertiliser left the farmer's holding;
- 4° identification of the holding or farm to which the fertiliser has been transferred.

The farmer applying or having applied fertiliser to an agricultural parcel not belonging to his holding shall record the information mentioned in subsection 2(2) in the use register for the parcel in question. As soon as the information contained in the single application for the year in question identifies the farmer to whose holding the parcel in question belongs, the information recorded will be transmitted by the Manure Bank to the farmer in question and will be visible to the farmer in the use register for the parcel in question.

For the purposes of this subsection, a fertiliser transfer between different operators belonging to the same farmer shall not be considered as a fertiliser transfer to a third party.

The name and address of the farmer or operator concerned and the farmer's or operator's number shall be given for the identification of the holding or the farm from which the fertiliser was transferred, as referred to in paragraph 3(4), and for the identification of the holding or farm to which the fertiliser was transferred, as referred to in paragraph 4(4). If the farmer or operator in question does not have a farmer or operator number, the business number of the farmer or operator in question shall be entered in the register.'

Article 4. A Part 5, consisting of Article 4.5.1, is inserted into Chapter 4 of the same Decree, last amended by the Flemish Government Decree of 22 December 2017, reading as follows:

'Part 5. Fertilisation standards

Article 4.5.1. For the purposes of the application of the Manure Decree of 22 December 2006 and its implementing decrees, the farmer whose holding the parcel in question belongs to is responsible for fertilising that parcel.

A farmer who, in the course of a year, uses an agricultural parcel which does not belong to his holding shall not apply fertiliser to that agricultural parcel, unless he is authorised to apply the fertiliser or has it applied by the farmer whose holding the parcel in question belongs to. Fertilisers applied with the consent of the farmer whose holding the agricultural parcel belongs to, shall be considered as fertilisers supplied to the farmer whose holding the parcel in

question belongs to. Fertilisers which cannot be shown to have been applied with the consent of the farmer whose holding the agricultural parcel belongs to shall not be considered as fertilisers supplied to the farmer whose holding the parcel in question belongs to. These fertilisers are considered to have been applied in breach of the provisions of the Manure Decree by the farmer applying fertiliser to a plot of land not belonging to his holding.

The Minister may lay down more detailed rules concerning the consent referred to in paragraph 2.’.

Article 5. In Chapter 12 of the same Decree, Article 12 is reinstated with the following wording:

‘VLM is the controller, referred to in Article 4(7) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), for the personal data processed pursuant to this Decree.

The controller referred to in paragraph 1 shall have the following obligations:

- 1° keep the personal data for the periods necessary to fulfil the tasks in question in accordance with the selection rules drawn up pursuant to Article III.87 of the Administrative Decree of 7 December 2018;
- 2° store the personal data in a secure environment and take appropriate technical and organisational measures to protect the integrity and confidentiality of the personal data;
- 3° inform the data subjects of the processing of their personal data in accordance with Articles 13 and 14 of the aforementioned Regulation and inform them of their rights on the basis of Articles 15 to 22 of the aforementioned Regulation.’.

Article 6. The Flemish minister, competent authority for the environment and nature, is responsible for the implementation of this Decree.

Brussels, ... (date).

The Minister-President of the Flemish Government,

Matthias DIEPENDAELE

The Flemish Minister for Environment and Agriculture,

Jo BROUNS