

LAWS OF DELAWARE
VOLUME 83
CHAPTER 140
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 96
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO COMMERCIAL FERTILIZERS AND SOIL CONDITIONERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 3 of the Delaware Code by amending Chapter 21 by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

CHAPTER 21. COMMERCIAL FERTILIZERS AND SOIL CONDITIONERS

§ 2101. Title.

This chapter shall be known as the Delaware Commercial Fertilizer and Soil Conditioner Law of ~~1971~~, 2021.

§ 2102. Enforcing agency.

This chapter shall be administered by the State Department of Agriculture of the State, hereinafter referred to as the Department.

§ 2103. Definitions of words and terms.

When used in this chapter:

(1) The term "commercial fertilizer" means any substance containing 1 or more recognized plant nutrient(s) which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes and ~~gypsum~~, and other products exempted by regulation of the Secretary;

a. A "fertilizer material" is a commercial fertilizer which either:

1. Contains important quantities of no more than one of the primary plant nutrients (nitrogen, ~~phosphoric acid~~ phosphate and potash), or
2. Has ~~approximately~~ 85% or more of its plant nutrient content present in the form of a single chemical compound, or
3. Is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration;

b. A "mixed fertilizer" is a commercial fertilizer containing any combination of mixture of fertilizer materials;

c. A "specialty fertilizer" is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries;

d. A "bulk fertilizer" is a commercial fertilizer distributed in a non-packaged form.

(2) The term "brand" means a term, design, or trademark used in connection with 1 or several grades of commercial fertilizer.

(3) The term "Department" means State Department of Agriculture.

(4) The term "Secretary" means the Secretary of the State Department of Agriculture or the Secretary's duly authorized delegates.

(5) The term "open formula" means mixed fertilizer labeled so as to show in addition to requirements of § 2105 the name and grade of materials and the quantity of each used per ton in compounding or mixing.

(6) The term "soil conditioner" means any substance or mixture of substances, including any plant biostimulant, imported, manufactured, prepared or sold for manurial soil-enriching or soil-corrective purposes or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or producing any chemical, biochemical, biological or physical change in the soil, except commercial fertilizer as defined in this chapter, ~~and~~ unmanipulated animal and vegetable manures, and agricultural liming materials ~~and gypsum~~.

~~(7) Guaranteed analysis:~~

~~a. Until the Department prescribes the alternative form of "guaranteed analysis" in accordance with paragraph~~

~~b. hereof, the (7) The term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:~~

~~1. Total Nitrogen (N) — percent~~

~~Available Phosphoric Acid Phosphate (P₂O₅) — percent~~

~~Soluble Potash (K₂O) — percent~~

~~2. For unacidulated mineral phosphatic materials and basic slag, bone, tankage and other organic phosphate materials, the total phosphoric acid phosphate and/or degree of fineness may also be guaranteed;~~

~~3. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the Secretary. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the Secretary and with the advice of the director of the agricultural experiment station. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the Secretary;~~

~~4. Potential ~~bisicity~~ basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton, when required by regulation;~~

~~b. When the Secretary finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, the Secretary may require by regulation thereafter that the "guaranteed analysis" shall be in the following form:~~

~~Total Nitrogen (N) — percent~~

~~Available Phosphorus (P) — percent~~

~~Soluble Potassium (K) — percent~~

~~Provided, however, that the effective date of said regulation shall be not less than 6 months following the issuance thereof; and provided, further, that for a period 2 years following the effective date of said regulation the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid phosphate and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that~~

phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

(8) The term "grade" means the percentage of total nitrogen, available phosphorus or phosphoric acid phosphate, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis. Provided, however, that specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphate, and soluble potash; provided, further, that fertilizer materials, bone meal, manures, and similar raw materials may be guaranteed in fractional units.

(9) The term "official sample" means any sample of commercial fertilizer or soil conditioner taken by the Secretary or the Secretary's agent and designated as "official" by the Secretary.

(10) The term "ton" means a net weight of 2,000 pounds avoirdupois.

(11) The term "percent" or "percentage" means the percentage by weight.

(12) The term "person" includes individual, partnership, association, firm and corporation.

(13) The term "distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends commercial fertilizer, or soil conditioner, or who offers for sale, sells, barter or otherwise supplies commercial fertilizer or soil conditioner in this State.

(14) The term "registrant" means the person who registers commercial fertilizer or soil conditioner under this chapter.

(15) The term "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer or soil conditioner.

(16) The term "labeling" means ~~all written, printed or graphic matter, upon or accompanying any commercial fertilizer or soil conditioner or advertisements, brochures, posters, television and radio announcements used in promoting the sale of such commercial fertilizers or soil conditioners.~~ any advertising, promotional or promotion of any fertilizer or soil conditioner including, but not limited to, all written, printed, graphic or electronic communication used in promoting the sale of such fertilizer or soil conditioner.

(17) The term "investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer.

(18) The term "deficiency" means the amount of nutrient found by analysis less than that guaranteed which may result from a lack of nutrient ingredients or from lack of uniformity.

(19) The term "custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet the specific consumer (end user) request(s) prior to blending.

§ 2104. Registration.

(a) Each brand and grade of commercial fertilizer shall be registered before being distributed in this State. The application for registration shall be submitted to the Department on a form furnished by the Department, and shall be accompanied by a fee of \$1.15 per ~~brand and~~ each grade of each brand, except those fertilizers sold in packages of 10 pounds or less shall be registered at a fee of ~~\$28.75~~ \$40 per each grade of each brand. Upon approval by the Department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

- (1) The net weight;
- (2) The brand and grade;
- (3) The guaranteed analysis;

(4) The name and address of the registrant.

(b) Each soil conditioner before being distributed in the State will be registered. The application for this registration will include a label or facsimile thereof for said material, and the Department may require proof to substantiate claims made for the material.

(c) Notwithstanding subsections (a) and (b) of this section, a distributor shall not be required to register any commercial fertilizer or soil conditioner which is already registered under this chapter by another person, providing the label does not differ in any respect.

(d) Also, notwithstanding any other provision of this section, a distributor shall not be required to register ~~each grade custom blends~~ of commercial fertilizer or soil conditioner ~~formulated according to specifications which are furnished by a consumer prior to mixing~~, but shall be required to register his firm ~~in a manner and~~ at a fee of \$100 for each individual facility distributing custom blends in the state ~~as prescribed in Department regulations~~ and to label such fertilizer as provided in § 2105(b). All registrations expire on December 31 of each year.

(e) All amendments to the terms of registration or application therefor are subject to fees specified in subsection (a) hereof and § 2106.

§ 2105. Labels.

(a) Any commercial fertilizer distributed in this State in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the information required by § 2104(a)(1)-(4) of this chapter. In case of bulk shipments, this information in written or printed form shall accompany delivery and be supplied to the purchaser at the time of delivery.

(b) A commercial fertilizer formulated according to the open formula method according to specifications furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis of each ingredient, and the name and address of the distributor; and after mixing, the guaranteed analysis on the label is to be determined by percentage of weight of a ton the same as is defined under grade in § 2103(8) of this chapter.

§ 2106. Inspection fees and tonnage reports.

(a) There shall be paid to the Department for all commercial fertilizers or soil conditioners distributed in this State to non-registrants an inspection fee at the rate of:

(1) Not less than 15 cents per ton effective January 1, 2022;

(2) Not less than 20 cents per ton effective January 1, 2023;

(3) Not less than 25 cents per ton effective January 1, 2024;

provided that sales to manufacturers or exchanges between them are hereby exempted. Fees so collected shall be paid to the Department, which shall deposit the same in ~~the General Fund~~ an appropriated special fund account in the Department.

On individual packages of commercial fertilizer or soil conditioners containing 10 pounds or less, there shall be ~~paid~~ paid, in lieu of the annual registration fee of ~~\$1 per brand and grade~~ \$1.15 per each grade of each brand and the ~~40 cents per ton~~ inspection fee, an annual registration fee and inspection fee of ~~\$25~~ \$40 for each ~~brand and grade~~ grade of each brand of fertilizer and soil conditioners sold or distributed. Where a person sells commercial fertilizer or soil conditioners in packages of 10 pounds or less and in packages over 10 pounds, this annual registration and inspection fee of ~~\$25~~ \$40 shall apply only to that portion sold in packages of 10 pounds or less, and that portion sold in packages over 10 pounds shall be subject to the same inspection fee ~~of 40 cents per ton~~ as provided in this chapter.

(b) Every person who distributes a commercial fertilizer or soil conditioner in this State shall file with the Department on forms furnished by the Department a semiannual statement for the periods ending December 31, and June 30, setting forth the number of net tons of each commercial fertilizer or soil conditioner distributed in this State during that period. The report shall be due on or before the last day of the month following the close of each period and with such statement the inspection fee shall be filed according to the rate set forth in subsection (a) of this section.

If the tonnage report is not filed and the payment of inspection fee is not made within 30 days after the end of each period, a surcharge amounting to 10 percent (minimum \$10) per month of the amount shall be assessed against the registrant, and the Department shall have a lien against the registrant for the amount owed, including surcharge.

(c) When more than one person is involved in the distribution of a commercial fertilizer or soil conditioner, the last person who has the fertilizer or soil conditioner registered and who distributes to a nonregistrant (dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment have already been submitted by a prior distributor of a fertilizer or soil conditioner.

(d) No information furnished the Department under this section shall be disclosed publicly in such a way as to divulge confidential information about the business operation of anyone.

(e) Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis, and other expenses necessary for the administration of this chapter

§ 2107. Inspection; sampling; analysis.

(a) It shall be the duty of the Secretary to sample, inspect, and test commercial fertilizers or soil conditioners distributed within this State at any time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers or soil conditioners are in compliance with the provisions of this chapter. The Secretary, individually or through the Secretary's agent, is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to commercial fertilizers or soil conditioners subject to the provisions of this chapter and the rules and regulations pertaining thereto, and to the records relating to their distribution; provided, however, that the action of the Secretary or his or her agent hereunder shall be with the consent of the person having control over the property in which such fertilizer or soil conditioner is kept, and if without such consent, then the Secretary or his or her agent is to obtain a valid search warrant therefor, specifying the premises to be searched and the purpose of the search, and setting forth probable cause.

(b) The methods of analysis and sampling shall be those adopted by the ~~Secretary from sources such as the Association of Official Analytical Chemists~~ AOAC International. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the Secretary may adopt such appropriate methods from other sources.

(c) The Secretary, in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in § 2103(9), and obtained and analyzed as provided for in subsection (b) of this section.

(d) The results of official analysis of commercial fertilizers or soil conditioners and portions of official samples shall be distributed by the Secretary as provided in the regulations.

§ 2108. Plant food deficiency.

(a) If analysis shows that a commercial fertilizer is deficient in 1 or more of its guaranteed primary plant foods (NPK) beyond the "investigational allowances" as established by published regulation, or if the overall index value of the fertilizer is below

the level established by regulation, a penalty of 2.3 times the commercial value (as defined in § 2109) of such deficiency(s) shall be assessed. When a fertilizer is subject to a penalty under both, the larger penalty payment shall apply.

(b) Deficiencies beyond the investigational allowances as established by regulation as provided in subsection (a) of this section in any other constituent(s) covered under § 2103(7)a.2., 3., and 4. of this chapter, which the registrant is required to or may guarantee, shall be evaluated and penalties prescribed therefor by the Secretary by published regulation.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of commercial fertilizer represented by the sample analyzed within 3 months after the date of notice from the Secretary to the registrant, receipts taken therefor and promptly forwarded to the Secretary. If said consumers cannot be found, the amount of the penalty shall be paid to the Department which shall deposit same in the General Fund.

(d) A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.

§ 2109. Commercial value.

For the purpose of determining the commercial values to be applied under the provisions of § 2108, the Secretary shall determine and publish annually the values per unit of nitrogen, available ~~phosphoric acid~~ phosphate, and soluble potash in commercial fertilizers in this State. ~~If guarantees are as provided in § 2103(7)b., the value shall be per unit of nitrogen, phosphorus and potassium.~~ The values so determined and published shall be used in determining and assessing penalties.

§ 2110. Misbranding.

No person shall distribute misbranded fertilizer or soil conditioner. A commercial fertilizer or soil conditioner shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is distributed under the name of another fertilizer product or soil conditioner;
- (3) If it is not labeled as required in § 2105 of this title and in accordance with regulations prescribed under this chapter;
- (4) If it purports to be or is represented as a commercial fertilizer or soil conditioner or is represented as containing a plant nutrient or commercial fertilizer or soil conditioner, unless such plant nutrient or commercial fertilizer or soil conditioner conforms to the definition of identity, if any, prescribed by regulation of the Secretary; in the adopting of such regulations the Secretary shall give due regard to commonly accepted definitions and official fertilizer or soil conditioner terms such as those issued by the Association of American Plant Food Control Officials.

§ 2111. Adulteration.

No person shall distribute an adulterated fertilizer product or soil conditioner. A commercial fertilizer or soil conditioner shall be deemed to be adulterated:

- (1) If it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label;
- (2) If its composition falls below or differs from that which it is purported to possess by its labeling;
- (3) If it contains unwanted crop seed or weed seed.

§ 2112. Publications.

The Secretary shall publish at least annually and in such forms as the Secretary may deem proper:

- (1) Information concerning the distribution of commercial fertilizers and soil conditioners;

(2) Results of analyses based on official samples of commercial fertilizers distributed within the State as compared with the analyses guaranteed under §§ 2104 and 2105.

§ 2113. Rules and regulations.

The Secretary may prescribe and enforce such rules and regulations relating to investigational allowances, definitions, records, and the distribution of commercial fertilizers and soil conditioners as may be necessary to carry into effect the full intent and meaning of this chapter. All regulations promulgated pursuant to this chapter shall be published and made available to all citizens.

The Department of Agriculture may adopt any policies and regulations necessary to permit the registration and distribution of plant biostimulants when the use, registration, or distribution of plant biostimulants is permitted by the Association of American Plant Food Control Officials.

§ 2114. Fertilizer and soil conditioner short in weight.

If any commercial fertilizer or soil conditioner in the possession of the consumer is found by the Secretary to be short in weight, the registrant of said commercial fertilizer or soil conditioner shall within 30 days after official notice from the Secretary pay to the consumer a penalty equal to 4 times the value of the actual shortage.

§ 2115. Cancellation of registrations.

The Department may cancel the registration of any brand of commercial fertilizer or soil conditioner or refuse to register any brand of commercial fertilizer or soil conditioner as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of this chapter or any rules and regulations promulgated thereunder; provided that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the Secretary.

§ 2116. "Stop sale" orders.

The Secretary may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lots of commercial fertilizer or soil conditioner to hold such commercial fertilizer or soil conditioner at a designated place when the Secretary finds that it is being offered or exposed for sale in violation of any of the provisions of this chapter, until the law has been complied with and said commercial fertilizer or soil conditioner is released in writing by the Secretary, or said violation has been otherwise legally disposed of by written authority. ~~Said "stop sale" orders shall remain effective for 30 days, or until an injunction is obtained pursuant to § 2118(e), or until voided by a court of competent jurisdiction, whichever occurs first. Provided, however, that no appeal from any "stop sale" order shall operate as a stay thereof.~~ The Secretary shall release the commercial fertilizer or soil conditioner so withdrawn when the requirements of this chapter have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

§ 2117. Seizure, condemnation, and sale.

Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the Secretary to a court of competent jurisdiction in the county in which said commercial fertilizer or soil conditioner is located. In the event one court finds the said commercial fertilizer or soil conditioner to be in violation of this chapter and orders the condemnation of said commercial fertilizer or soil conditioner, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the State. Provided that in no instance shall the disposition of said commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or soil conditioner or for permission to process or relabel said commercial fertilizer or soil conditioner to bring it into compliance with this chapter.

§ 2118. Violations.

- (a) If it shall appear from the examination of any commercial fertilizer or soil conditioner that any of the provisions of this chapter or the rules and published regulations issued thereunder have been violated, the Secretary shall cause notice of the violations to be given to the registrant, distributor, or possessor from whom said sample was taken, and any person so notified shall be given opportunity to be heard under such rules and regulations as may be prescribed by the Secretary. If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this chapter or rules and regulations issued thereunder have been violated, the Secretary may certify the fact to the Attorney General.
- (b) Any person convicted of violating any provision of this chapter or the rules and regulations issued thereunder shall be punished in the discretion of the Superior Court, which shall have exclusive original jurisdiction over offenses under this chapter.
- (c) Nothing in this chapter shall be construed as requiring the Secretary or his representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of this chapter when the Secretary believes that the public interests will be best served by a suitable notice of warning in writing.
- (d) It shall be the duty of the Attorney General to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.
- (e) The Secretary is hereby authorized to apply for and the Court of Chancery is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule or regulation promulgated under this chapter notwithstanding the existence of other remedies at law. Injunctions shall be issued without bond.

§ 2119. Hearing required.

If, after notification by the Secretary of the Department's order penalizing any person under §§ 2108 and 2114 of this title, denying registration under § 2104 of this title, or cancelling registration under § 2115 of this title, any aggrieved person shall so demand in writing, the Secretary shall hold a hearing. At such hearing a record shall be kept of all evidence and testimony, which shall be under oath, and of the Secretary's findings and decisions. Based on the evidence presented and the law set forth in this chapter, as well as regulations adopted pursuant thereto, the Secretary shall affirm, revoke or modify the Department's original order.

§ 2120. Appeals.

Nothing in this chapter shall be construed to prohibit appeals to a court of competent jurisdiction by persons aggrieved by a decision of the Secretary under § 2119. Such an appeal shall be on the record and confined to a determination as to whether the Secretary abused his or her discretion, provided that no appeal shall stay an order by the Department.

§ 2121. Exchanges between manufacturers.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioners to manufacturers or manipulators who have registered their brands as required by the provisions of this chapter.

§ 2122. Delegation of duties.

All authority vested in the State Secretary of Agriculture by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture as may be designated for said purpose.

§ 2123. Cooperation with other Entities

The Department may cooperate and enter into agreements with governmental agencies of this State, other States, and agencies of the Federal Government in order to carry out the purpose and provisions of this chapter.

Approved September 10, 2021