

## No. 1984-220

## AN ACT

## HB 1983

Amending the act of May 29, 1956 (1955 P.L.1795, No.598), entitled, as amended, "An act regulating the sale and distribution of mixed fertilizers, fertilizer materials, soil conditioners and plant growth substances; providing for permanent registration of brands and grades of fertilizers, soil conditioners and plant growth substances; providing for licensing of persons who manufacture or mix certain fertilizers, soil conditioners and plant growth substances or whose name appears on the label; requiring labels on fertilizers, soil conditioners and plant growth substances; providing for inspection fees and for the cancellation of licenses; imposing powers and duties on the Secretary of Agriculture and prescribing penalties," further providing for the registration and regulation of fertilizers, soil conditioners and plant growth substances; changing criminal penalties; and providing for civil penalties and remedies.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title and section 2(15), (16), (17) and (18) of the act of May 29, 1956 (1955 P.L.1795, No.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, amended December 1, 1977 (P.L.258, No.86), are amended and a clause is added to read:

## AN ACT

Regulating the sale and distribution of mixed fertilizers, fertilizer materials, soil conditioners and plant growth substances; providing for **[permanent]** registration of brands and grades of *specialty* fertilizers, soil conditioners and plant growth substances; providing for licensing of persons who manufacture or mix certain fertilizers, soil conditioners and plant growth substances or whose name appears on the label; requiring labels on fertilizers, soil conditioners and plant growth substances; providing for inspection fees and for the cancellation of licenses; imposing powers and duties on the Secretary of Agriculture and prescribing penalties.

Section 2. Definitions.—As used in this act:

\* \* \*

(15) "Facility" means each separate mill or plant[, **fixed or mobile or distributor of fertilizer, customer-formula**] *used to produce* fertilizer, soil conditioner or plant growth substance.

(16) [**"Investigational allowance" means an allowance for variations inherent in the taking, preparation and analysis of an official sample of fertilizer, soil conditioner or plant growth substance.**] *"Tolerance" means a permitted variation from the guarantee of an official sample of fertilizer, soil conditioner or plant growth substance.*

(17) "Soil conditioners" means those substances or mixture of substances intended for sale, offered for sale or sold for soil corrective purposes or claimed to be **[effective for promoting or stimulating the growth of plants,**

increasing the productivity of soil, improving the quality of crops, or] *capable of* producing any chemical or physical change in the soil.

(18) "Plant growth substances" means those products which are sold for the promotion or alteration of plant growth *or claimed to be effective for promoting or stimulating the growth of plants, increasing the productivity of soil or improving the quality of crops.*

\* \* \*

(20) "*Guarantor*" means the person whose name appears on the label of fertilizer, specialty fertilizer, soil conditioner or plant growth substance.

Section 2. Section 3 of the act, amended December 1, 1977 (P.L.258, No.86), is amended to read:

Section 3. Registration.—(a) Each brand and grade of *specialty* fertilizer, soil conditioner and plant growth substance shall be registered by the [manufacturer or importer] *guarantor* with the Department of Agriculture before being offered for sale, sold or distributed in this Commonwealth. The application for registration shall be submitted to the secretary on forms furnished by the secretary and shall be accompanied by a fee of [fifteen dollars (\$15) per brand] *twenty-five dollars (\$25) per brand and grade.*

Fees so collected shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture for the payment of the cost of inspection, sampling, [and] analysis, and other expenses necessary for the administration of this act.

The [secretary may require a sample label to be submitted before registering any] *registrant shall submit a sample label before the initial registering of any specialty* fertilizer, soil conditioner or plant growth substance. The secretary may ask for proof from the registrant of any claims made by the registrant of the product on the label, on the application for registration, or, in any other manner [other than guarantees of the analysis]. Any research in support of such claims shall be performed by an institution approved by the secretary *utilizing acceptable scientific methodology.* Upon approval by the secretary, a copy of the registration shall be furnished to the applicant. All registrations shall [expire on] *be renewed by* June 30 of each year, [unless the secretary is notified on a yearly basis] by the registrant on forms furnished by the secretary, listing the brands and grades the registrant [wants continued and intends to continue selling in] *intends to sell during* the next twelve month period. [Those registered as of June 30, 1965, shall be considered to be permanently registered.] The application for [specialty fertilizer] *registration of specialty fertilizers* shall include the following information in the following order:

- (1) The net weight.
- (2) The brand and grade.
- (3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:
  - (i) Total Nitrogen (N) ..... %
  - (ii) Ammoniacal Nitrogen (if claimed or required) ..... %
  - (iii) Nitrate Nitrogen (if claimed or required) ..... %

- (iv) Water Insoluble Nitrogen (if claimed or if the statement “organic” or “slow acting nitrogen” is used in the label) ..... %
- (v) Available Phosphoric Acid (P2 O5) ..... %
- (vi) Soluble Potash (K2 O) ..... %
- (vii) Additional Plant Nutrients as prescribed by regulation ..... %

**[(viii) Potential Acidity or Basicity (if claimed or required) .....% or .....lbs.**

**(ix) Calcium Carbonate equivalent per ton ..... %]**

(4) The name and address of the person guaranteeing the fertilizer.

(a.1) The application for soil conditioner or plant growth substances shall include the following information in the following order:

- (1) The net weight or other measure prescribed by regulation.
- (2) The brand.
- (3) An accurate statement of composition and purpose.
- (4) The name and address of the *[licensee] person guaranteeing the soil conditioner or plant growth substance.*

**[(a.2) The application for fertilizer shall include the following:**

- (1) The net weight.
- (2) The brand and grade.
- (3) The guaranteed analysis showing the minimum percentage of plant

**food in the following order:**

- Total Nitrogen ..... %
- Available Phosphoric Acid ..... %
- Soluble Potash ..... %

(4) The name and address of the person guaranteeing the fertilizer.

(a.3) Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid, and the degree of fineness. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphoric acid, need be guaranteed. Additional plant food elements, determinable by chemical methods, may be guaranteed only by permission of the secretary, by and with the advice of the Director of the Agricultural Experiment Station. When any such additional plant foods are claimed, they shall be included in the guarantee, and shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the secretary. The secretary may permit the potential basicity or acidity (expressed in terms of calcium carbonate equivalent in multiples of one hundred pounds per ton) to be registered and guaranteed.]

*(a.2) For unacidulated mineral phosphatic material and basic slag, bone, tankage and other phosphatic materials, the total phosphoric acid or degree of fineness, or both, may also be guaranteed.*

*(a.3) Guarantees for contents other than nitrogen, phosphorus and potassium may be permitted or required by regulation by the secretary. The guarantees for such other nutrients shall be expressed in the form of the element. The source (oxides, salts, chelates, etc.) of such other nutrients may be required to be stated on the application for registration and may be*

*included on the label. Other beneficial substances or compounds, determinable by laboratory methods of a recognized authority, such as the Association of Official Analytical Chemists or the American Public Health Association, Incorporated, also may be guaranteed by permission of the secretary.*

(b) A distributor shall not be required to register any brand [of] or any grade of specialty fertilizer, soil conditioner or plant growth substance which is already registered under this act by another person.

(c) The plant nutrient content of each and every brand [of fertilizer,] and grade of specialty fertilizer, and the composition of each brand of soil conditioner or plant growth [substances] substance must remain uniform for the period of registration[,]. [and, in no case, even at a subsequent registration, shall the percentage of any guaranteed plant food element be changed in such a manner that the crop-producing quality of the fertilizer, soil conditioner or plant growth substance is lowered.

(d) Every person or business entity who owns or operates a manufacturing facility producing fertilizers, soil conditioners, or plant growth substances offered for sale, sold or distributed in Pennsylvania, or under whose name appears on the label of these products are offered for sale, sold or distributed in Pennsylvania shall obtain a license.

(e) Said licensee shall at all times produce a uniform mixture of fertilizer materials. When two or more fertilizer materials are delivered in the same load, they shall be uniformly mixed unless they are in separate compartments.

(f) Any person who mixes to the customer's order must furnish to the purchaser and consumer an invoice or delivery ticket showing:

(1) The name and address of the person guaranteeing the fertilizer;

(2) The weight and guaranteed analysis of each of the fertilizer materials used in the mixture or delivered in each of the separate compartments in the load; and

(3) The guaranteed analysis of the mixture as required in section 3 (a) (3) above.

(g) The annual license fee as required by section 3 (d) shall be twenty-five dollars (\$25).

Fees so collected shall be paid into the State Treasury and shall be credited to the general government operations appropriation of the Department of Agriculture for the payment of the cost of inspection, sampling, and analysis, and other expenses necessary for the administration of this act. Said license fee shall be paid annually on July 1.

(h) A distributor shall not be required to register a fertilizer formulated according to specifications which are furnished by a consumer prior to mixing, but shall be required to label such fertilizer as provided in section 3 (f).]

Section 3. The act is amended by adding a section to read:

*Section 3.1. Licensing.—(a) Every person who owns or operates a manufacturing facility producing fertilizer, soil conditioners or plant growth substances offered for sale, sold or distributed in this Commonwealth, and each guarantor of these products which are offered for sale, sold or distributed in this Commonwealth shall obtain a license.*

(b) *The licensee shall at all times produce a uniform mixture of fertilizer materials. When two or more fertilizer materials are delivered in the same load, they shall be uniformly mixed unless they are in separate compartments.*

(c) *The annual license fee as required in subsection (a) shall be twenty-five dollars (\$25). The license fee shall be paid annually by July 1. Fees so collected shall be credited to the general government operations appropriation of the Department of Agriculture for the payment of the cost of inspection, sampling and analysis, and other expenses necessary for the administration of this act.*

Section 4. Sections 4, 5, 6(d), 7 and 18 of the act, amended December 1, 1977 (P.L.258, No. 86), are amended to read:

Section 4. Labeling.—(a) Any *specialty* fertilizer, soil conditioner or plant growth substance offered for sale or sold or distributed in this Commonwealth in bags, or other containers, shall have placed on or affixed to the container in written or printed form the **[net weight and the]** information required in subsection (a) of section 3 for specialty **[fertilizer, fertilizer] fertilizers**, soil conditioners or plant growth substances~~], either~~. *The label information required for fertilizer, excluding specialty fertilizer, shall be the following, in the order delineated:*

(1) *The net weight.*  
 (2) *The brand and grade.*  
 (3) *The guaranteed analysis showing the minimum percentage of plant food:*

- (i) *Total Nitrogen ..... %*
- (ii) *Available Phosphoric Acid ..... %*
- (iii) *Soluble Potash ..... %*

(4) *The name and address of the person guaranteeing the fertilizer.*

*Said information shall appear* (1) on tags affixed to the end of the package **[between the ears or the sewed end]**, or (2) directly on the package in which case, for bags containing fifty pounds or more, the grade shall appear **[also]** on the end or on the face of the package in type that is plainly legible.

(b) If distributed in bulk, a written or printed statement of the weight and the information required by *either* section 3 (a) *or 4(a), whichever is appropriate*, shall accompany delivery and be supplied to the purchaser.

(c) **[Fertilizer materials mixed to customer's order shall be labeled in accordance with subsection (f) of section 3.] Any person who mixes or distributes fertilizer to the customer's order must furnish to the purchaser and consumer an invoice or delivery ticket showing:**

(1) *The net weight.*  
 (2) *The guaranteed analysis of the mixture as required in section 3(a)(3) or subsection (a)(3) of this section, whichever is appropriate.*

(3) *The name and address of the person guaranteeing the fertilizer.*

(d) Fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name and grade of the product.

Section 5. Inspection Fees; Reports.—(a) The **[registrant] guarantor** whose name appears on the label of all fertilizers, *specialty fertilizers*, soil

conditioners and plant growth substances offered for sale, sold or distributed in this Commonwealth shall pay semi-annually and not later than the last day of January ~~or~~ *and* July of each year an inspection fee at the rate of a maximum of ~~[ten cents (\$.10)]~~ *thirteen cents (\$.13)* per ton on packages of more than ~~[twenty-five]~~ *fifteen* pounds. *In no case shall the inspection fee paid semi-annually amount to less than ten dollars (\$10).* On packages of ~~[twenty-five]~~ *fifteen* pounds or less there shall be paid annually and not later than the last day of January of each year to the secretary for each brand and grade of fertilizer, soil conditioners and plant growth substances an inspection fee of twenty-five dollars (\$25) ~~[per brand and grade]~~. If the ~~[registrant]~~ *guarantor* whose name appears on the label sells or offers for sale or distributes fertilizers, soil conditioners and plant growth substances in this Commonwealth in both packages of less and more than ~~[twenty-five]~~ *fifteen* pounds the twenty-five dollars (\$25) ~~[should]~~ *shall* be paid for its brands and grades sold in packages of ~~[twenty-five]~~ *fifteen* pounds or less, and the ~~[ten cents (\$.10)]~~ *thirteen cents (\$.13)* per ton fee shall be paid for its packages of more than ~~[twenty-five]~~ *fifteen* pounds.

Fees so collected shall be paid into the State Treasury and shall be credited to the General Government Operations Appropriation to the Department of Agriculture for the payment of the cost of inspections, sampling and analyses and other expenses necessary for the administration of this act.

(b) The person whose name appears on the label shall submit, along with an inspection fee, a report in a manner prescribed by the secretary listing the net tons of each brand and grade by counties of all fertilizers, soil conditioners and plant growth substances sold or distributed in this Commonwealth for the period of the inspection fee.

The secretary or his authorized representative may examine the records of the submitting person to verify the information contained in the reports submitted under this section.

There is a penalty of ten dollars (\$10) or ten percent of the inspection fee, whichever is greater, for any fee or report not submitted at the required time.

Section 6. Inspection, Sampling, Analysis.—\* \* \*

(d) Upon request, the secretary shall furnish to the ~~[registrant]~~ *guarantor* a portion of any sample found subject to penalty or other legal action. *Such requests must be made within thirty days of notification of sample violations.*

Section 7. Plant Nutrient Deficiency.—(a) (1) If the analysis shows that any fertilizer falls short of the guaranteed analysis in any one ~~[ingredient]~~ *nutrient*, a penalty of ~~[ten]~~ *five* times the value of the deficiency shall be assessed by the secretary against the manufacturer ~~[in accordance with tolerances that the Department of Agriculture shall promulgate within one year from this enactment. It is the legislative intent that the Department of Agriculture, so far as practicable, adopt the tolerances established in the current Model Regulations printed in the annual publications of the Association of American Plant Food Control Officials. Tolerances presently established in this act shall apply until the new tolerances have been duly promulgated by regulation].~~ *A tolerance of ten percent of the guaranteed analysis, with a two*

*unit maximum, shall be permitted for primary nutrients (N,P,K). Secondary and micronutrients shall be deemed deficient in accordance with tolerances promulgated by the Department of Agriculture by regulation.*

*(2) A fertilizer shall be deficient if the determined analysis of the combined primary nutrients is such that the relative commercial value computed using the schedule of values fixed by the secretary falls below ninety-seven percent of the relative commercial value similarly computed from the guarantee. When a fertilizer is subject to a penalty under both this clause and clause (1), the larger penalty payment shall apply. Any such penalties assessed shall not exceed the price paid by the purchaser.*

*(3) Deficiencies in any other [ingredient] guaranteed substance, except those covered under this section, which the registrant is required to or may guarantee shall be evaluated by the secretary and [a penalty of ten times the value of the deficiency shall be assessed by the secretary; provided, however, that such penalty shall not exceed the price paid by the purchaser] appropriate actions or penalties, as provided for in this act, may be taken or assessed.*

*(b) [All penalties assessed under this section shall be paid to the purchaser of the lot of fertilizer represented by the sample analyzed within three months after the date of notice from the secretary to the registrant and receipts evidencing payment shall be promptly forwarded to the secretary by the registrant. If said purchaser cannot be found, the amount of the penalty shall be paid to the State Treasurer who shall deposit the same into the General Fund to be credited to the general government operations appropriation of the Department of Agriculture for the payment of the cost of inspection, sampling, and analysis, and other expenses necessary for the administration of this act.] When a penalty is assessed under subsection (a), an amount equal to five times the commercial value of the deficiency shall be paid to the purchaser of the lot of fertilizer represented by the sample analyzed within three months after the date of notice from the secretary. If the purchaser cannot be found, the amount of the penalty shall be remitted to the department. All penalty moneys collected by the department shall be entered into a fund to be used for research relating to fertilizer.*

**Section 18. Criminal Penalties.—(a)** Any person who violates any of the provisions of this act or any rule, regulation or order made pursuant to this act shall, [for the first or second offense, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) and costs of prosecution and, in default of payment thereof, shall be sentenced to undergo imprisonment for not more than thirty days, and for a third or subsequent offense, if three offenses including the last offense are committed within one year from the time of the first offense, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not less than one thousand dollars (\$1000) nor more than two thousand five hundred dollars (\$2,500) or to undergo imprisonment not exceeding one year, or both.] upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than three hundred dollars (\$300) or to undergo imprisonment for not more than ninety days, or both.

*(b) Any person, who, within three years after being convicted of an offense pursuant to subsection (a) of this section, engages in similar unlawful conduct, or who violates any provision of this act after being issued a written warning by the secretary pursuant to this act, shall be guilty of a misdemeanor of the second degree and shall, upon conviction thereof, be sentenced to pay a fine of not more than five thousand dollars (\$5,000) or imprisonment for not more than two years, or both.*

Section 5. The act is amended by adding sections to read:

*Section 18.1. Civil Penalties.—In addition to proceeding under any other remedy available at law or in equity for a violation of this act or a rule or regulation adopted hereunder, or any order issued pursuant hereto, the secretary, after hearing, may assess a civil penalty upon a person for the violation. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000). The civil penalty shall be payable to the Department of Agriculture and shall be collectible in any manner now or hereafter provided at law for the collection of debt. If any person liable to pay a civil penalty neglects or refuses to pay it after demand, the amount of the civil penalty, together with interest and any other costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person after the same has been entered and docketed of record by the prothonotary of the county where such property is situated. It shall be the duty of each prothonotary, upon receipt of the certified copy of such a lien, to enter and docket the same in the records of his office, and to index the same as judgments are indexed without requiring the payment of costs as a condition precedent to entry.*

*Section 18.2. Civil Remedy.—In addition to any other remedies provided for in this act, the Attorney General, at the request of the secretary, may initiate in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business, an action in equity for an injunction to restrain any and all violations of this act or the rules and regulations promulgated hereunder or any order issued pursuant to this act from which no timely appeal has been taken or which has been sustained on appeal. In any such proceeding, the court shall, upon motion of the Commonwealth, issue a preliminary injunction if it finds that the defendant is engaging in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings. In addition to an injunction, the court, in such equity proceedings, may levy civil penalties as provided by this act.*

Section 6. This act shall take effect in 60 days.

APPROVED—The 19th day of December, A. D. 1984.

DICK THORNBURGH