

No. 85

AN ACT

SB 777

Amending the act of May 29, 1956 (P.L.1795), entitled "An act regulating the sale and distribution of mixed fertilizers and fertilizer materials; imposing powers and duties on the Secretary of Agriculture and prescribing penalties," providing for permanent registration of brands and grades of commercial fertilizers; providing for licensing of persons who manufacture or mix certain fertilizers; labeling of fertilizers and inspection fees; and providing for cancellation of distributors' licenses.

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

Section 1. Section 2, act of May 29, 1956 (P.L.1795), known as the "Pennsylvania Fertilizer Law of 1956," is amended by adding two clauses to read:

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

* * *

(14) "*Custom blend*" means a mixture of commercial fertilizer or fertilizer materials, each batch of which mixture is mixed according to the specific instructions of the final purchaser and includes such other terms as "customer formula" and "buyers' mix".

(15) "*Facility*" means each separate mill or plant, fixed or mobile or distributor of commercial fertilizer or customer-formula fertilizer.

Section 2. Section 3 of the act, amended June 24, 1965 (P.L.144) and April 3, 1968 (Act No. 34), is amended to read:

Section 3. Registration.—(a) Each brand and grade of commercial fertilizer shall be registered by the manufacturer or importer with the Department of Agriculture before being offered for sale, sold or distributed in this State. 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.

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 and other acts specified by the General Assembly.

The secretary may require a sample label to be submitted before registering any fertilizer. Upon approval by the secretary, a copy of the registration shall be furnished to the applicant. All registrations shall expire on 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 the next twelve month period. Those registered as of June 30,

1965, shall be considered to be permanently registered. The application shall include the following information in the following order:

(1) [The name and address of the person guaranteeing the fertilizer.] *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:

Total Nitrogen percent

Available Phosphoric Acid percent

Soluble Potash..... percent

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

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.

(b) A distributor shall not be required to register any brand of commercial fertilizer which is already registered under this act by another person.

(c) The plant nutrient content of each and every brand of commercial fertilizer 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 commercial fertilizer is lowered.

(d) Any [person who] *facility that* manufactures, mixes or mixes to the customer's order any commercial fertilizer material offered for sale, sold or distributed, in Pennsylvania must first obtain a fertilizer manufacturing license from the Secretary of Agriculture.

(e) Said licensee shall at all times produce an intimate and uniform mixture of commercial fertilizer materials. When two or more fertilizer materials are delivered in the same load, they shall be intimately and 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 intimate 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) Any licensee required to be licensed in subsection (d) hereof, who sells only registered grades, shall pay a ten dollar (\$10) license fee as well as a registration fee for grades not previously registered, and all other licensees shall pay a twenty dollar (\$20) license fee. **[Said license fee shall be paid annually on July 1.]**

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 and other acts specified by the General Assembly. Said license fee shall be paid annually on July 1.

(h) *A distributor shall not be required to register a commercial 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. Section 5 of the act, amended April 3, 1968 (Act No. 34), is amended to read:

Section 5. Inspection Fees; Reports.—(a) There shall be paid to the secretary for all commercial fertilizers offered for sale, sold or distributed in this State an inspection fee at the rate of ten cents (\$.10) per ton, or at a rate to be determined by the Secretary of Agriculture, which is adequate for the payment of the costs of inspection, sampling and analysis, and other expenses necessary for the administration of this act. The maximum rate, as determined by the secretary, shall not exceed ten cents (\$.10) per ton. Inspection fees shall not be paid for sales to manufacturers or exchanges between them. 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 and other acts specified by the General Assembly.

[On packages of commercial fertilizer sold only in containers of twenty-five pounds or less, there shall be paid an inspection fee of ten dollars (\$10) for each brand or grade. When a person sells fertilizer in packages of twenty-five pounds or less, and also in packages over twenty-five pounds or on regular commercial fertilizer when less than one hundred tons have been shipped, there shall be paid in lieu of the regular tonnage inspection fee, a ten dollar (\$10) semi-annual tonnage inspection fee with the tonnage report. The regular tonnage inspection fee of ten cents (\$.10) per ton shall apply to all brands and grades on shipments of one hundred tons or more in any semi-annual reporting period.] On individual packages of commercial fertilizer containing twenty-five pounds or less, there shall be paid a semi-annual inspection fee of ten

dollars (\$10) for each brand and grade sold or distributed. Where a person sells commercial fertilizer in packages of twenty-five pounds, or less and in packages over twenty-five pounds, this semi-annual inspection fee of ten dollars (\$10) shall apply to that portion sold in packages of twenty-five pounds or less, and that portion sold in packages over twenty-five pounds shall be subject to the same inspection fee of ten cents (\$.10) per ton as provided in this act.

(b) Payment of the inspection fee shall be evidenced by a statement of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the secretary.

(c) Every distributor, person, manufacturer or importer of commercial fertilizer in this State selling to a nonregistrant shall file, in a manner prescribed by the Secretary of Agriculture, not later than the last day of January and July of each year, a semi-annual statement, setting forth the number of net tons of commercial fertilizer distributed in this State during the preceding six-months period and, upon filing such statement, shall pay the inspection fee at the rate stated in subsection (a) of this section.

If the tonnage report is not filed by January 31 or July 31, a penalty amounting to ten percent minimum of ten dollars (\$10) shall be added to the amount of the inspection fee when payment is made. This penalty fee shall not prevent the secretary from taking other actions as provided in this act.

Section 4. Subsection (d) of section 6 and section 7 of the act are amended to read:

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

(d) **[The results of official analysis of any commercial fertilizer which has been found to be subject to penalty or other legal action shall be forwarded by the secretary to the registrant at least thirty days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the secretary, the report shall become official.]** Upon request, the secretary shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

Section 7. Plant Nutrient Deficiency.—(a) If the analysis shows that any commercial fertilizer falls short of the guaranteed analysis in any one ingredient, a penalty shall be assessed by the secretary against the manufacturer in accordance with [the following:

(1) **Total Nitrogen.** A penalty of three times the value of the deficiency, if such deficiency is in excess of two-tenths of one percent on goods that are guaranteed two percent; twenty-five one-hundredths of one percent on goods that are guaranteed three percent; thirty-five one-hundredths of one percent on goods that are guaranteed four percent; four-tenths of one percent on goods that are guaranteed five percent up to and including eight percent; five-tenths of one percent on goods guaranteed above eight percent up to and including thirty percent; and seventy-five one-hundredths of one percent on goods guaranteed over thirty percent.

(2) **Available Phosphoric Acid.** A penalty of three times the value of the deficiency, if such deficiency exceeds four-tenths of one percent on goods that are guaranteed up to and including ten percent; five-tenths of one percent on goods that are guaranteed above ten percent up to and including twenty-five percent; and seventy-five one-hundredths of one percent on goods guaranteed over twenty-five percent.

(3) **Soluble Potash.** A penalty of three times the value of the deficiency, if such deficiency is in excess of two-tenths of one percent on goods that are guaranteed two percent; three-tenths of one percent on goods ~~that are guaranteed~~ three percent; four-tenths of one percent on goods guaranteed four percent; five-tenths of one percent on goods guaranteed above four percent up to and including eight percent; six-tenths of one percent on goods guaranteed above eight percent up to and including twenty percent; and one percent on goods guaranteed over twenty percent.] *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.*

[(4)] Deficiencies in any other constituent, except those covered under this section, which the registrant is required to or may guarantee shall be evaluated by the secretary and penalties therefor shall be prescribed by the secretary.

(b) All penalties assessed under this section shall be paid to the purchaser of the lot of commercial 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 and other acts specified by the General Assembly.*

Section 5. Section 11 of the act, amended April 3, 1968 (Act No. 34), is amended to read:

Section 11. **Tonnage Reports.**—Each person registering or guaranteeing commercial fertilizers under this act shall furnish the secretary with a confidential written statement of the tonnage, by counties, of each grade of commercial fertilizer sold by him to a nonregistrant in this State. The statement shall include all sales for the periods of July 1 to and including December 31 and of January 1 to and including June 30 of each year. A statement shall not be required when

the [reporting system in subsection (c) of section 5 is used] *invoice system of reporting is used*. The secretary may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within thirty days from the date of the close of each period. The secretary, however, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operation of any person. The secretary or his authorized representative shall have authority to examine the manufacturer's records and verify the tonnages of commercial fertilizer manufactured, stored or sold or handled.

APPROVED—The 12th day of August, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 85.

A handwritten signature in cursive script, reading "C. McLaughlin Tucker".

Secretary of the Commonwealth.