WEST VIRGINIA CODE: §19-15-7

§19-15-7. Deficiencies.

(a) Penalty for nitrogen, available phosphate and soluble potash. -- If the analysis shall show that a fertilizer is deficient in one or more of its guaranteed primary plant nutrients (N-P-K) beyond the "investigational allowances" established by rule, or if the overall index value of the fertilizer is below the level established by rule, a penalty of three times the commercial value of such deficiency shall be assessed.

(b) Penalty for soil amendment. -- If the analysis shows that any soil amendment falls short of the guaranteed analysis in any one soil amending ingredient or in total soil amending ingredients, a penalty shall be assessed in favor of the commissioner. A penalty of three times the value of the total soil amending ingredient deficiency shall be assessed when the total deficiency is more than two percent under the calculated total soil amending ingredient guarantee.

(c) Penalty for other deficiencies. -- Deficiencies beyond the investigational allowances established by rule in any other constituent which the registrant is required to or may guarantee shall be evaluated and penalties prescribed by the commissioner.

(d) Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of such penalties.

(e) All penalties assessed under this section shall be paid to the consumer of the lot of regulated product represented by the sample analyzed. Within three months after the date of notice from the commissioner to the registrant, the penalty shall be collected and promptly forwarded to the commissioner. If the consumers cannot be found, the amount of penalty shall be paid to the commissioner and deposited in the Department of Agriculture's fees account.

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

(g) If, upon evidence satisfactory to the commissioner, a person is found to have: (1) Altered the content of any regulated product shipped to him by a registrant; or (2) mixed or commingled regulated product from two or more suppliers so that the result of either alteration changes the analysis of the regulated product as originally guaranteed, then the person who has altered, mixed or commingled shall become responsible for obtaining a registration, as the case may be; shall be held liable for all assessments; and shall be subject to other provisions of this article, including, by way of example, but not by way of limitation, seizure, condemnation and embargo.

WV Legislature