

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 849

(By Mr. Hause & Mr. Ours)



PASSED March 9 1974

In Effect July 1, 1974 Passage



FILED IN THE OFFICE
EDGAR F. BRISWELL III
SECRETARY OF STATE
THIS DATE 3/29/74

679

ENROLLED

H. B. 849

(By MR. HAWSE and MR. OURS)

[Passed March 9, 1974; in effect July 1, 1974.]

AN ACT to repeal article fifteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to enact in lieu thereof a new article fifteen of said chapter, relating to commercial fertilizer; definitions; requiring fertilizer to be registered; requiring labels and inspections; fees therefor; requiring tonnage reports; requiring inspection, sampling and analysis; plant food deficiency; prohibiting misbranding and adulteration; requiring certain publications; rules and regulations; short weight; cancellations of registrations and hearings thereon; "stop sale" orders; seizure, condemnation and sale; exchanges between manufacturers; disposition of registration; inspection; penalty fees; powers of courts of competent jurisdiction; duty of prosecuting attorneys; and penalties for violation.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article fifteen of said chapter be enacted in lieu thereof, to read as follows:

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.

§19-15-1. Definitions of words and terms.

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

3 (b) "Bulk fertilizer" means a commercial fertilizer dis-
4 tributed in a nonpackaged form.

5 (c) "Commercial fertilizer" means any substance contain-
6 ing one or more recognized plant nutrients which is used
7 for its plant nutrient content and which is designed for use
8 or claimed to have value in promoting plant growth, except
9 unmanipulated animal and vegetable manures, marl, lime,
10 limestone, wood ashes and gypsum, and other products ex-
11 empted by regulation of the commissioner.

12 (d) "Commissioner" means the commissioner of agricul-
13 ture of the state of West Virginia or his duty authorized
14 agent.

15 (e) "Department" means the department of agriculture of
16 the state of West Virginia.

17 (f) "Distributor" means any person who imports, con-
18 signs, manufactures, produces, compounds, mixes or blends
19 commercial fertilizer, or who offers for sale, sells, barter or
20 otherwise supplies commercial fertilizer in this state.

21 (g) "Fertilizer material" means a commercial fertilizer
22 which either:

23 (1) Contains important quantities of no more than one
24 of the primary plant nutrients (nitrogen, phosphoric acid
25 and potash), or

26 (2) Has approximately eighty-five percent of its plant
27 nutrient content present in the form of a single chemical
28 compound, or

29 (3) Is derived from a plant or animal residue or by-
30 product or a natural material deposit which has been processed
31 in such a way that its content of primary plant nutrients
32 has not been materially changed except by purification and
33 concentration.

34 (h) "Grade" means the percentage of total nitrogen, avail-
35 able phosphorus or phosphoric acid, and soluble potassium
36 or soluble potash stated in whole numbers in the same terms,
37 order and percentages as in the guaranteed analysis: *Provided,*

38 That fertilizer materials, bone meal, manures and similar raw
39 materials may be guaranteed in fractional units.

40 (i) "Guaranteed analysis" means the minimum percentage
41 of plant nutrients claimed in the following order and form:

42 (1) Total nitrogen (N) percent
43 Available phosphoric acid (P_2O_5)..... percent
44 Soluble potash (K_2O) percent

45 (2) For unacidulated mineral phosphatic materials and
46 basic slag, bone, tankage and other organic phosphate
47 materials, the total phosphoric acid or degree of fineness may
48 also be guaranteed.

49 (3) Guarantees for plant nutrients other than nitrogen,
50 phosphorus and potassium may be permitted or required by
51 regulation of the commissioner. The guarantees for such
52 other nutrients shall be expressed in the form of the element.
53 The sources of such other nutrients (oxides, salt, chelates, etc.)
54 may be required to be stated on the application for registra-
55 tion and may be included as a parenthetical statement on the
56 label. Other beneficial substances or compounds, determinable
57 by laboratory methods, also may be guaranteed by permission
58 of the commissioner. When any plant nutrients or other sub-
59 stances or compounds are guaranteed, they shall be subject
60 to inspection and analysis in accord with the methods and
61 regulations prescribed by the commissioner.

62 (4) Potential basicity and acidity expressed in terms of
63 calcium carbonate equivalent in multiples of one hundred
64 pounds per ton, when required by regulation, or

65 (5) When the commissioner finds that the requirements
66 for expressing the guaranteed analysis of phosphorus and
67 potassium in elemental form would not impose an economic
68 hardship on distributors and users of fertilizer by reason of
69 conflicting labeling requirements among the states, he may
70 require by regulation thereafter that the "guaranteed analysis"
71 shall be in the following form:

72 Total nitrogen (N) percent
73 Available phosphorus (P) percent
74 Soluble potassium (K) percent

75 *Provided*, That the effective date of said regulation shall not
76 be less than six months following the issuance thereof:
77 *Provided, however*, That for a period of two years following
78 the effective date of said regulation the equivalent of phos-
79 phorus and potassium may also be shown in the form of
80 phosphoric acid and potash: *Provided, further*, That after the
81 effective date of a regulation issued under the provisions of
82 this section, requiring that phosphorus and potassium be
83 shown in the elemental form, the guaranteed analysis for
84 nitrogen, phosphorus and potassium shall constitute the grade.

85 (j) "Investigational allowance" means an allowance for
86 variations inherent in taking, preparation and analysis of an
87 official sample of commercial fertilizer.

88 (k) "Label" means the display of all written, printed or
89 graphic matter upon the immediate container or statement
90 accompanying a commercial fertilizer.

91 (l) "Labeling" means all written, printed or graphic matter,
92 upon or accompanying any commercial fertilizer, or adver-
93 tisements, brochures, posters, television and radio announce-
94 ments used in promoting the sale of such commercial
95 fertilizers.

96 (m) "Mixed fertilizer" means a commercial fertilizer con-
97 taining any combination or mixture of fertilizer materials.

98 (n) "Official sample" means any sample of commercial
99 fertilizer taken by the commissioner or his agent and desig-
100 nated as "official" by the commissioner.

101 (o) "Percent" means the percentage by weight.

102 (p) "Person" means an individual, partnership, associa-
103 tion, firm and corporation.

104 (q) "Registrant" means the person who registers com-
105 mercial fertilizer under the provisions of this article.

106 (r) "Specialty fertilizer" means a commercial fertilizer
107 distributed primarily for nonfarm use, such as home gardens,
108 lawns, shrubbery, flowers, golf courses, municipal parks,
109 cemeteries, greenhouses and nurseries.

110 (s) "Ton" means a net weight of two thousand pounds
111 avoirdupois.

§19-15-2. Registration.

1 (a) Each brand and grade of commercial fertilizer shall be
2 registered before being distributed in this state. The application
3 for registration shall be submitted to the commissioner on
4 forms furnished or approved by the commissioner, and shall
5 be accompanied by a fee of one dollar per brand and grade,
6 except that those fertilizers sold in packages of ten pounds
7 or less shall be registered at a fee of ten dollars each.
8 Upon approval by the commissioner a copy of the registration
9 shall be furnished to the applicant.

10 All registrations expire on the thirtieth day of June of the
11 following year.

12 The application shall include the following information:

- 13 (1) The net weight;
- 14 (2) The brand and grade;
- 15 (3) The guaranteed analysis; and
- 16 (4) The name and address of the registrant.

17 (b) A distributor shall not be required to register any
18 commercial fertilizer which is already registered under this
19 article by another person, providing the label does not differ
20 in any respect.

21 (c) A distributor shall not be required to register each
22 grade of commercial fertilizer formulated according to specifi-
23 cations which are furnished by a consumer prior to mixing,
24 but shall be required to register his firm in a manner and at a
25 fee as prescribed in the regulations by the commissioner and
26 to label such fertilizer as provided in subsection (b), section
27 three of this article.

§19-15-3. Labels.

1 (a) Any commercial fertilizer distributed in this state in
2 containers shall have placed on or affixed to the container a
3 label setting forth in clearly legible and conspicuous form the
4 information required by subdivision (1), (2), (3) and (4), sub-

5 section (a), section two of this article. In case of bulk ship-
6 ments, this information in written or printed form shall ac-
7 company delivery and be supplied to the purchaser at time of
8 delivery.

9 (b) A commercial fertilizer formulated according to speci-
10 fications which are furnished by a consumer prior to mixing
11 shall be labeled to show the net weight, guaranteed analysis,
12 and the name and address of the distributor.

§19-15-4. Inspection fees.

1 (a) There shall be paid to the commissioner for all commer-
2 cial fertilizers distributed in this state an inspection fee at the
3 rate of twenty cents per ton: *Provided*, That sales to manufac-
4 turers or exchanges between them are hereby exempted. Fees
5 so collected shall be used for the payment of the costs of in-
6 spection, sampling and analysis, and other expenses necessary
7 for the administration of this article.

8 On individual packages of commercial fertilizer containing
9 ten pounds or less, there shall be paid in lieu of the twenty cents
10 per ton inspection fee, an inspection fee of ten dollars
11 for each brand and grade sold or distributed. Where a person
12 sells commercial fertilizer in packages over ten pounds the in-
13 spection fee of ten dollars shall apply only to that por-
14 tion sold in packages of ten pounds or less, and that por-
15 tion sold in packages over ten pounds shall be subject to the
16 same inspection fee of twenty cents per ton as provided in this
17 article.

18 (b) Every person who distributes a commercial fertilizer in
19 this state shall:

20 File with the commissioner on forms furnished or approved
21 by the commissioner a quarterly statement for the periods end-
22 ing on the thirtieth day of September, the thirty-first day
23 of December, the thirty-first day of March and the thirtieth
24 day of June, setting forth the number of net tons of each
25 commercial fertilizer distributed in this state during such
26 quarter. The report shall be due on or before the thirtieth
27 day of the month following the close of each quarter and upon
28 such statement shall pay the inspection fee at the rate stated
29 in subsection (a) of this section.

30 If the tonnage report is not filed and the payment of in-
31 spection fee is not made within thirty days after the end of the
32 quarter, a collection fee amounting to ten percent of the
33 amount shall be assessed against the registrant, and the
34 amount of fees due shall constitute a debt and become the
35 basis of a judgment against the registrant.

36 (c) When more than one person is involved in the distribu-
37 tion of a commercial fertilizer, the last person who has the
38 fertilizer registered and who distributes to a nonregistrant
39 (dealer or consumer) is responsible for reporting the tonnage
40 and paying the inspection fee, unless the report and payment
41 is made by a prior distributor of a fertilizer.

§19-15-5. Tonnage reports.

1 The person transacting, distributing or selling commercial
2 fertilizer to a nonregistrant shall mail the commissioner a
3 report showing the county of the consignee, the amounts
4 (tons) of each grade of commercial fertilizer, and the form
5 in which the fertilizer was distributed (bags, bulk, liquid,
6 etc.). This information shall be reported by one of the fol-
7 lowing methods: (a) Submitting a summary report approved
8 by the commissioner on or before the fifteenth day of each
9 month covering shipments made during the preceding month;
10 or (b) submitting a copy of the invoice within five business
11 days after shipment. No information furnished the commis-
12 sioner under this section shall be disclosed in such a way
13 as to divulge the operation of any person.

§19-15-6. Inspection, sampling and analysis.

1 (a) It shall be the duty of the commissioner, who may act
2 through his authorized agent, to sample, inspect, make analyses
3 of, and test commercial fertilizers distributed within this state at
4 any time and place and to such an extent as he may deem
5 necessary to determine whether such commercial fertilizers are
6 in compliance with the provisions of this article. The com-
7 missioner individually or through his agent is authorized to
8 enter upon any public or private premises or carriers during
9 regular business hours in order to have access to commercial
10 fertilizers subject to the provisions of this article and the

11 rules and regulations pertaining thereto, and to the records
12 relating to their distribution.

13 (b) The methods of analysis and sampling to determine
14 plant food deficiencies in fertilizer shall use the tolerances estab-
15 lished by the Association of American Plant Food Control Of-
16 ficials and the Association of Analytical Chemist.

17 (c) The commissioner, in determining for administrative
18 purposes whether any commercial fertilizer is deficient in plant
19 food, shall be guided solely by the official sample as defined in
20 subsection (e), section one of this article, and obtained and
21 analyzed as provided for in subsection (b) of this section.

22 (d) The results of official analysis of commercial fertilizers
23 and portions of official samples, shall be distributed by the
24 commissioner as provided in the regulations.

§19-15-7. Plant food deficiency.

1 (a) Penalty for nitrogen, available phosphoric acid or phos-
2 phorus and potash or potassium.—If the analysis shall show
3 that a commercial fertilizer is deficient in one or more of its
4 guaranteed primary plant foods (NPK) beyond the “investiga-
5 tional allowances” as established by regulation, or if the over-
6 all index value of the fertilizer is below the level established
7 by regulation, a penalty of three times the commercial value
8 of such deficiency shall be assessed.

9 (b) Penalty for other deficiencies.—Deficiencies beyond
10 the investigational allowances as established by regulation in
11 any other constituent, which the registrant is required to or
12 may guarantee, shall be evaluated and penalties prescribed
13 therefor by the commissioner.

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

17 (d) All penalties assessed under this section shall be paid
18 to the consumer of the lot of commercial fertilizer represented
19 by the sample analyzed within three months after the date of
20 notice from the commissioner to the registrant, receipts taken
21 therefor and promptly forwarded to the commissioner. If said
22 consumers cannot be found, the amount of penalty shall be

23 paid to the commissioner who shall deposit the same in the
24 department of agriculture's fees account.

§19-15-8. Commercial value.

1 For the purpose of determining the commercial values to be
2 applied under the provisions of section seven of this article,
3 the commissioner shall determine and publish annually the
4 values per unit of nitrogen, available phosphoric acid and
5 soluble potash in commercial fertilizers in this state.

§19-15-9. Misbranding.

1 No person shall distribute misbranded fertilizer. A commer-
2 cial fertilizer shall be deemed to be misbranded:

3 (a) If its label is false or misleading in any particular;

4 (b) If it is distributed under the name of another fertilizer
5 product;

6 (c) If it is not labeled as required in section three of this
7 article and in accordance with regulations prescribed under
8 this article; or

9 (d) If it purports to be or is represented as a commercial
10 fertilizer, or is represented as containing a plant nutrient or
11 commercial fertilizer unless such plant nutrient or commercial
12 fertilizer conforms to the definition of identity, if any, pre-
13 scribed by regulation of the commissioner; in the adopting of
14 such regulations the commissioner shall give regard to com-
15 monly accepted definitions and official fertilizer terms such as
16 those issued by the association of american plant food control
17 officials.

§19-15-10. Adulteration.

1 No person shall distribute an adulterated fertilizer product.
2 A commercial fertilizer shall be deemed to be adulterated:

3 (a) If it contains any deleterious or harmful ingredient in
4 sufficient amount to render it injurious to beneficial plant life
5 when applied in accordance with directions for use on the
6 label, or if adequate warning statements or directions for use,
7 which may be necessary to protect plant life are not shown up-
8 on the label;

9 (b) If its composition falls below or differs from that which
10 it is purported to possess by its labeling; or

11 (c) If it contains unwanted crop seed or weed seed.

§19-15-11. Publications.

1 The commissioner shall publish at least annually and in
2 such forms as he may deem proper: (a) Information concern-
3 ing the distribution of commercial fertilizers; and (b) results
4 of analyses based on official samples of commercial fertilizers
5 distributed within the state as compared with the analyses
6 guaranteed under sections two and three of this article.

§19-15-12. Rules and regulations.

1 The commissioner is authorized to prescribe and, after a
2 public hearing following due public notice, to enforce such
3 rules and regulations relating to investigational allowances,
4 definitions, records, and the distribution of commercial ferti-
5 lizers as may be necessary to carry into effect the full intent
6 and meaning of this article.

§19-15-13. Short weight.

1 If any commercial fertilizer in the possession of the con-
2 sumer is found by the commissioner to be short in weight, the
3 registrant of said commercial fertilizer shall within thirty days
4 after official notice from the commissioner pay to the con-
5 sumer a penalty equal to four times the value of the actual
6 shortage.

§19-15-14. Cancellation of registrations.

1 The commissioner is authorized and empowered to cancel
2 the registration of any brand of commercial fertilizer or to
3 refuse to register any brand of commercial fertilizer as
4 herein provided, upon satisfactory evidence that the registrant
5 has used fraudulent or deceptive practices in the evasions or
6 attempted evasions of the provisions of this article or any
7 rules and regulations promulated thereunder: *Provided*, That
8 no registration shall be revoked or refused until the registrant
9 shall have been given the opportunity to appear for a hearing
10 by the commissioner.

§19-15-15. "Stop sale" orders.

1 The commissioner may issue and enforce a written or
2 printed "stop sale, use or removal" order to the owner or
3 custodian of any lot of commercial fertilizer and to hold at
4 a designated place when the commissioner finds said com-
5 mercial fertilizer is being offered or exposed for sale in
6 violation of any of the provisions of this article until the
7 law has been complied with and said commercial fertilizer is
8 released in writing by the commissioner, or said violation has
9 been otherwise legally disposed of by written authority. The
10 commissioner shall release the commercial fertilizer so with-
11 drawn when the requirements of the provisions of this article
12 have been complied with and all costs and expenses incurred
13 in connection with the withdrawal have been paid.

§19-15-16. Seizure, condemnation and sale.

1 Any lot of commercial fertilizer not in compliance with the
2 provisions of this article shall be subject to seizure on com-
3 plaint of the commissioner to a court of competent jurisdiction
4 in the area in which said commercial fertilizer is located. In the
5 event the court finds the said commercial fertilizer to be in
6 violation of this article and orders the condemnation of said
7 commercial fertilizer it shall be disposed of in any manner
8 consistent with the quality of the commercial fertilizer and
9 the laws of the state: *Provided*, That in no instance shall the
10 disposition of said commercial fertilizer be ordered by the court
11 without first giving the claimant an opportunity to apply to
12 the court for release of said commercial fertilizer or for
13 permission to process or relabel said commercial fertilizer
14 to bring it into compliance with this article.

§19-15-17. Violations.

1 (a) If it shall appear from the examination of any com-
2 mercial fertilizer that any of the provisions of this article or
3 the rules and regulations issued thereunder have been violated,
4 the commissioner shall cause notice of the violation to be given
5 to the registrant, distributor or possessor from whom said
6 sample was taken; any person so notified shall be given an
7 opportunity to be heard under such rules and regulations as
8 may be prescribed by the commissioner. If it appears after

9 such hearing, either in the presence or absence of the person
10 so notified, that any of the provisions of this article or rules
11 and regulations issued thereunder have been violated, the
12 commissioner is hereby authorized to prosecute in any court
13 of competent jurisdiction any person violating the provisions
14 of this article.

15 (b) Any person convicted of violating any provisions of this
16 article or the rules and regulations issued thereunder shall be
17 guilty of a misdemeanor, and, upon conviction thereof, shall be
18 fined not less than one hundred dollars nor more than two
19 hundred dollars for the first offense and not less than two
20 hundred dollars nor more than five hundred dollars for each
21 subsequent offense.

22 (c) Nothing in this article shall be construed as requiring
23 the commissioner or his agent to report for prosecution or for
24 the institution of seizure proceedings as a result of minor vio-
25 lations of the article when he believes that the public interest
26 will be best served by a suitable notice of warning in writing.

27 (d) It shall be the duty of each prosecuting attorney to
28 whom any violation is reported to cause appropriate proceed-
29 ings to be instituted and prosecuted in a court of competent
30 jurisdiction without delay.

31 (e) The commissioner is hereby authorized to apply for and
32 the court to grant a temporary or permanent injunction re-
33 straining any person from violating or continuing to violate
34 any of the provisions of this article or any rule or regulation
35 promulgated under the article notwithstanding the existence of
36 other remedies at law. Said injunction to be issued without
37 bond.

§19-15-18. Exchanges between manufacturers.

1 Nothing in this article shall be construed to restrict or avoid
2 sales or exchanges of commercial fertilizers to each other by
3 importers, manufacturers or manipulators who mix fertilizer
4 materials for sale or as preventing the free and unrestricted
5 shipments of commercial fertilizer to manufacturers or manipu-
6 lators who have registered their brands as required by the pro-
7 visions of this article.

§19-15-19. Expenditure of registration, inspection and penalty fees.

1 All registration, inspection and such penalty fees not paid
2 to the consumer shall be deposited in a special account with
3 the state treasurer and shall be expended on order of the
4 commissioner.

§19-15-20. Constitutionality.

1 If any clause, sentence, paragraph or part of this article
2 shall for any reason be judged invalid by any court of com-
3 petent jurisdiction, such judgment shall not affect, impair or
4 invalidate the remainder thereof but shall be confined in its
5 operation to the clause, sentence, paragraph or part thereof
6 directly involved in the controversy in which such judgment
7 shall have been rendered.

§19-15-21. Repeal.

1 All laws and parts of laws in conflict with or inconsistent
2 with the provisions of this article are hereby repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Daniel Darby
Chairman Senate Committee

Clarence C. Chuston, Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1974.

Howard W. Carson
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

M. P. Brotherton, Jr.
President of the Senate

Louis F. Mahan
Speaker House of Delegates

The within approved this the 26th
day of March, 1974.

Arch W. Shaw, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/21/74

Time 10:30a.m.