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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975



ENROLLED

HOUSE BILL No. 940

(By Mrs. Neal and Mr. Lee)



PASSED February 17 1975

In Effect July 1, 1975 Passage



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ENROLLED

H. B. 940

(By MRS. NEAL and MR. SEE)

[Passed February 17, 1975; in effect July 1, 1975.]

AN ACT to amend and reenact article fifteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to agricultural liming materials; definitions; required registration and fees therefor; required labeling; toxic materials prohibiting as adulterant; semiannual reporting required and tonnage fees assessed; inspection, sampling and analysis required; providing for stop sale and seizure orders and registration cancellation; deficiency assessments; regulations; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article fifteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.

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

1 As used in this article:

2 (a) "Brand" means the term, designation, trademark, pro-
3 duct name or other specific designation under which indi-
4 vidual liming materials are offered for sale.

5 (b) "Bulk" means liming materials in nonpackaged form.

6 (c) "Burnt lime" means a material, made from limestone
7 which consists essentially of calcium oxide or a combination of
8 calcium oxide with magnesium oxide.

9 (d) "Calcium carbonate equivalent" means the acid neu-
10 tralizing capacity of agricultural liming material expressed as
11 the weight percentage of calcium carbonate.

12 (e) "Commissioner" means the commissioner of agriculture
13 of the state of West Virginia or his duly authorized agent.

14 (f) "Fineness" means the percentage by weight of the ma-
15 terial which will pass United States standard sieves of speci-
16 fied sizes.

17 (g) "Hydrated lime" means a material, made from burnt
18 lime, which consists essentially of calcium hydroxide or a
19 combination of calcium hydroxide with magnesium oxide and
20 magnesium hydroxide, or both magnesium oxide and magne-
21 sium hydroxide.

22 (h) "Label" means any written or printed matter on or at-
23 tached to the package or on the delivery ticket which accom-
24 panies bulk shipments.

25 (i) "Limestone" means a material consisting essentially of
26 calcium carbonate with magnesium carbonate capable of neu-
27 tralizing soil acidity.

28 (j) "Liming materials" means a product whose calcium and
29 magnesium compounds are used in agriculture because of their
30 capability in neutralizing soil acidity.

31 (k) "Marl" means a granular or loosely consolidated earth-
32 ly material composed largely of sea shell fragments and calcium
33 carbonate.

34 (l) "Percent or percentage" means percent or percentage
35 by weight.

36 (m) "Person" means any individual, partnership, associa-
37 tion, fiduciary, firm, corporation or any organized group of
38 persons whether incorporated or not.

39 (n) "Slag" means any industrial waste or by-product con-
40 taining calcium or calcium and magnesium in forms that will
41 neutralize soil acidity.

42 (o) "Ton" means a weight of two thousand pounds avoi-
43 rdupois.

44 (p) "Weight" means the weight of undried liming material
45 as offered for sale.

§19-15A-2. Registration of brands; registration fees.

1 (a) No agricultural liming material shall be sold or offered
2 for sale in the state unless it has been registered with the com-
3 missioner.

4 (b) Application for registration shall be made to the com-
5 missioner on forms approved or supplied by the commissioner.
6 Each separately identified liming product shall be registered
7 before being distributed in the state.

8 (c) The commissioner shall collect a fifteen dollar registra-
9 tion fee for each brand registered.

10 (d) All registrations shall expire at the end of the calen-
11 dar year of issue unless sooner revoked by the commissioner
12 as provided in section six of this article.

§19-15A-3. Required labeling; toxic materials prohibited.

1 (a) No person shall sell, offer to sell, or expose for
2 sale in the state any agricultural liming materials which do
3 not have affixed to the outside of each package in a con-
4 spicuous manner a plainly printed, stamped or otherwise
5 marked label, tag or statement, or in the case of bulk sales,
6 a delivery invoice including at least the following:

7 (1) The name and principal business address of the
8 manufacturer or distributor.

9 (2) The brand name of the liming material.

10 (3) The identification of the product as to the type of
11 liming material.

12 (4) The net weight of the liming material.

13 (5) The minimum percentage of calcium oxide and mag-
14 nesium oxide or calcium carbonate and magnesium car-
15 bonate.

16 (6) The calcium carbonate equivalent as determined by
17 methods prescribed by the association of official analytical
18 chemists.

19 (7) The minimum percent by weight passing through
20 United States standard sieves.

21 (b) A copy of the statement provided for in subsection
22 (a) shall be posted for each brand sold in bulk at each site
23 where purchase orders are accepted or from which deliveries
24 for such liming materials are made.

25 (c) No information or statement shall appear on any
26 package, label, delivery invoice or advertisement which gives
27 a false or misleading impression to the purchaser as to the
28 quality, analysis, type or composition of the liming material.

29 (d) When liming material has been adulterated sub-
30 sequent to packaging, labeling or loading thereof and before
31 delivery has been made to the consumer, conspicuous, plainly
32 worded notice to that effect shall be affixed by the vendor to
33 the package or delivery invoice to identify the kind and
34 degree of adulteration therein: *Provided*, That no liming
35 material shall be sold or offered for sale in the state which
36 contains toxic materials in quantities injurious to plants or
37 animals when applied according to directions.

38 (e) If the commissioner should find, after public hearing
39 following due notice, that a requirement for listing the
40 percentage of calcium and magnesium in elemental form
41 would help in reducing among the states conflicting labeling
42 requirements and would not impose an economic hardship on
43 purchasers of liming materials, he may issue regulations
44 which shall require the minimum percentage of calcium oxide
45 and magnesium oxide or calcium carbonate and magnesium
46 carbonate to be expressed as:

47	Total calcium (Ca)	percent
48	Total magnesium (Mg)	percent

49 However, the effective date of such regulation shall be at
50 least six months after the date of issue and for an additional
51 two year period the equivalent of calcium and magnesium
52 may also be shown in the form of calcium oxide and mag-
53 nesium oxide or calcium carbonate and magnesium carbonate.

§19-15A-4. Inspection fee; report of tonnage.

1 (a) Within thirty days following the thirtieth day of June

2 and the thirty-first day of December of each year, each regis-
3 trant shall submit on a form furnished by the commissioner a
4 summary of tons of each liming material sold by him in the
5 state during the previous six months period. Such statement
6 shall be accompanied by payment of an inspection fee at the
7 rate of three cents per ton. A penalty of ten percent of the
8 fees due shall be assessed a registrant whose report is not re-
9 ceived within the specified period.

10 (b) The commissioner shall publish and distribute at least
11 annually to each liming material registrant and other interest-
12 ed persons, a composite report showing the net tons of liming
13 material sold in this state during the preceding period. This
14 report shall in no way divulge information that can be related
15 to the business of any individual registrant.

§19-15A-5. Inspection, sampling, analysis.

1 (a) It shall be the duty of the commissioner to inspect,
2 sample, analyze and test liming materials distributed within the
3 state as he may deem necessary to determine whether such
4 liming materials are in compliance with the provisions of this
5 article and for this purpose the commissioner is authorized to
6 enter upon any public or private premises or carriers during
7 regular business hours to inspect and sample liming materials,
8 and to inspect records related to their distribution.

9 (b) The methods of analysis and sampling shall be those
10 approved by the association of official analytical chemists and
11 the American society for testing and materials.

12 (c) The results of official analyses of liming materials shall
13 be distributed by the commissioner as he may deem neces-
14 sary to carry out the enforcement of this article.

15 (d) The commissioner shall on request, provide the regis-
16 trant with a portion of the official sample.

§19-15A-6. Stop sale orders; cancellation of registration; seizure of materials.

1 (a) The commissioner is authorized to cancel the registra-
2 tion of any brand of liming material and to refuse the applica-
3 tion for registration of any brand of liming material upon be-

4 ing presented satisfactory evidence that the registrant has used
5 fraudulent or deceptive practices in the evasion or attempted
6 evasion of the provisions of this article or any regulation issued
7 thereunder: *Provided*, That no registration shall be revoked
8 or refused until the registrant has been given an opportunity
9 to appear for a hearing before the commissioner.

10 (b) The commissioner may issue a "stop sale, use, or re-
11 moval" order to the owner or custodian of any lot of liming
12 material when he finds said liming material is being offered or
13 exposed for sale in violation of any of the provisions of this
14 article or the regulations issued thereunder and such order
15 shall remain in effect until it has been rescinded in writing by
16 the commissioner: *Provided*, That the commissioner shall not
17 rescind any "stop sale, use or removal" order until the re-
18 quirements of this article have been complied with and all
19 costs and expenses incurred in connection therewith have been
20 paid.

21 (c) Any liming material found to be in violation of the pro-
22 visions of this article shall be subject to seizure on complaint
23 of the commissioner to a court of competent jurisdiction in the
24 county in which such liming material is located. If the court
25 orders the condemnation of such material it shall be disposed
26 of in a manner consistent with the quality of the liming ma-
27 terial and the laws of the state. In no instance shall the dis-
28 position of said liming material be ordered by the court with-
29 out first giving the claimant an opportunity to apply to the
30 court for release of said liming material or for permission to
31 process or relabel said liming material to bring it in com-
32 pliance with this article.

§19-15A-7. Deficiency assessment, tolerances and payment.

1 A registrant shall pay to the commissioner a penalty assessed
2 in accordance with the provisions of this section for each lot of
3 liming material found to be deficient in its guaranteed analysis.
4 For the purpose of assessing such penalties, the commissioner
5 shall establish values by regulation for the neutralizing qualities
6 and fineness of liming materials and such penalties shall be
7 computed by multiplying times three the extent of the deficiency
8 found by the established value. Such penalty is to be paid to the

9 user consumer if he be known, with receipts for same being
10 mailed or delivered to the commissioner as evidence of the
11 penalty having been paid. If said user consumer is not known
12 the penalty shall be paid to the commissioner.

§19-15A-8. Regulations.

1 The commissioner is authorized to issue, after public hearing
2 following due notice such, and in accordance with the provi-
3 sions of chapter twenty-nine-a of this code, regulations in addi-
4 tion to any others mentioned elsewhere in the article, as he
5 deems necessary to implement the full intent and meaning of
6 this article including, but not limited to minimum acceptable
7 sieve analysis classifications and minimum acceptable calcium
8 carbonate equivalents for agricultural limestone, burnt lime,
9 hydrated lime, marl and slag.

§19-15A-9. Lime fund.

1 All fees collected by the commissioner under the provisions
2 of this article shall be placed in a special fund with the state
3 treasurer to be known as the lime inspection fund and shall be
4 expended on order of the commissioner.

§19-15A-10. Penalties.

1 Any person violating any of the provisions of this article
2 or the regulations issued thereunder shall be guilty of a
3 misdemeanor, and, upon conviction thereof, shall be fined
4 not less than one hundred nor more than two hundred dollars
5 for the first offense and not less than two hundred nor more
6 than five hundred dollars for each subsequent offense.

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

James L. Davis
Chairman Senate Committee

Dorcas K. Chamberlain
Chairman House Committee

Originated in the House.

Takes effect July 1, 1975.

J. C. McLaughlin
Clerk of the Senate

U. Blankenship
Clerk of the House of Delegates

W. T. Bristow
President of the Senate

Levin F. M. McNamee
Speaker House of Delegates

The within *approved* this the *26th*
day of *February*, 1975.

Arch A. Phares, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 2/20/75

Time 3:40 p.m.