WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for

HOUSE BILL No. 4590.

(By: Dr. M. Burke Temple)

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Passed........................................ March 5, 1990

In Effect........................................ 90 Days From Passage
AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine and ten, article fifteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions of words and terms, registration of brands; registration fees; required labeling; toxic materials prohibited; inspection fee; report of tonnage; annual report; inspection; sampling; analysis; embargo; suspend or cancellation of registration; seizure of materials; violations; regulations; lime fund and penalties.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine and ten, article fifteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.


1 As used in this article:

2 (a) "Agricultural liming material" means a product
with calcium or calcium and magnesium compounds which are capable of neutralizing soil acidity and which are intended to be used to neutralize soil acidity.

(b) “Brand” means the term, designation, trademark, product name or other specific designation under which individual agricultural liming materials are offered for sale.

(c) “Bulk” means agricultural liming materials in nonpackaged form.

(d) “Burnt lime” means a material, made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

(e) “Calcium carbonate equivalent” means the acid neutralizing capacity of agricultural liming material expressed as the weight percentage of calcium carbonate.

(f) “Commissioner” means the commissioner of agriculture of the state of West Virginia or his duly authorized agent.

(g) “Distributor” means any person who sells or offers for sale agricultural liming products that are registered pursuant to this article. Exempted from this definition are persons who retail registered products to the ultimate consumer.

(h) “Dolomite” means an agricultural liming material composed chiefly of carbonates of magnesium and calcium in substantially equimolar (1-1.19) proportions.

(i) “Embargo” means an order prohibiting the sale, processing, mixing, transporting and use of any product.

(j) “Fineness classification” means the designation given to the product by the percentage by weight of the material which will pass U.S. standard sieves of specific sizes.

(k) “Ground shells” means a material obtained by grinding the shells of mollusks.

(l) “High calcic liming material” means an agricultural liming material containing at least twenty-five
percent calcium and at least ninety-one percent of the total calcium and magnesium is calcium.

(m) "High magnesic liming material" means an agricultural liming material containing at least six percent magnesium.

(n) "Hydrated lime" means a material, made from burnt lime, which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and magnesium hydroxide, or both magnesium oxide and magnesium hydroxide.

(o) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(p) "Limestone" means a material consisting essentially of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(q) "Marl" means a granular or loosely consolidated earthy material composed largely of shell fragments and calcium carbonate precipitated in ponds.

(r) "Percent or percentage" means percent or percentage by weight.

(s) "Person" means any individual, partnership, association, fiduciary, firm, corporation or any organized group of persons whether incorporated or not.

(t) "Registrant" is a person who registers agricultural liming materials by product and is responsible for the guarantee of such product.

(u) "Slag" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

(v) "Type" means the designation given to the product from its source material.

(w) "Ton" means a weight of two thousand pounds avoirdupois.

(x) "Weight" means the weight of undried liming material as offered for sale.
§19-15A-2. Registration of brands; registration fees.

(a) No agricultural liming material shall be used, sold or offered for sale in the state unless it has been registered with the commissioner.

(b) Application for registration shall be made to the commissioner on forms approved or supplied by the commissioner. Each separately identified agricultural liming material shall be registered before being distributed or used in the state.

(c) The commissioner shall collect a twenty-five dollar registration fee for each brand of the agricultural liming material registered; and, the commissioner shall collect a ten dollar registration fee from all distributors of agricultural liming materials.

(d) All registrations shall expire at the end of the calendar year of issue unless sooner revoked by the commissioner as provided in section six of this article.


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

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

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

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

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

(5) The minimum percentage of calcium oxide and magnesium oxide or calcium carbonate and magnesium carbonate or total elemental calcium and total elemental magnesium.
(6) The calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists.

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

(8) The fineness classification of the material.

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

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

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

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

(a) The amount of the inspection fee shall be clearly stated on each sales invoice prepared in normal course of business by either a registrant or distributor reflecting the amount of said fee and the payor of the same.

(b) Within thirty days following the thirtieth day of June and the thirty-first day of December of each year, each registrant and distributor shall submit on a form furnished by the commissioner a summary of tons of each agricultural liming material sold or distributed by
him in the state during the previous six months' period. Such report of tonnage shall be accompanied by payment of an inspection fee at the rate of five cents per ton. If such tonnage, or portion thereof, has been paid by another person, documentation by invoice must accompany such report. The minimum semiannual payment shall be ten dollars. The minimum fee is waived if the total amount of the semi-annual inspection fee due is two dollars or less. A penalty of ten percent of the fees due or ten dollars whichever is greater shall be assessed a registrant or distributor whose report is not received by the fifteenth day of August and the fifteenth day of February each calendar year.

(c) The commissioner shall publish and distribute at least annually to each agricultural liming material registrant, distributor and other interested persons, a composite report showing the net tons of agricultural liming material sold in this state during the preceding period. This report shall in no way divulge information that can be related to the business of any individual registrant.

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

(a) It shall be the duty of the commissioner to audit, inspect, sample, analyze and test agricultural liming materials used, sold or offered for sale within the state as he may deem necessary to determine whether such agricultural liming materials are in compliance with the provisions of this article and for this purpose the commissioner is authorized to enter upon any public or private premises or carriers during reasonable times to inspect and sample liming materials, and to inspect records related to their distribution.

(b) The methods of analysis and sampling shall be those approved by the association of official analytical chemists or those approved by the commissioner.

(c) The results of official analyses of agricultural liming materials shall be distributed by the commissioner as he may deem necessary to carry out the enforcement of this article.
(d) The commissioner shall on request, provide the registrant with a portion of the official sample: Provided, That the request be made within thirty days of the assessment of a violation.

(e) The commissioner in determining whether any agricultural liming material is deficient in guarantee shall be guided solely by the official sample.

§19-15A-6. Embargo; suspend or cancellation of registration; seizure of materials.

(a) The commissioner is authorized to suspend or cancel the registration of any brand of agricultural liming material and to refuse the application for registration of any brand of agricultural liming material upon being presented satisfactory evidence that the registrant has used false, fraudulent or deceptive practices in the evasion or attempted evasion of the provisions of this article or any regulation issued thereunder: Provided, That no registration shall be suspended, revoked or refused until the registrant has been given an opportunity to appear for a hearing before the commissioner.

(b) The commissioner may issue an embargo order to the owner or custodian of any lot of agricultural liming material when he finds said agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this article or the regulations issued thereunder and such order shall remain in effect until it has been rescinded in writing by the commissioner: Provided, That the commissioner shall not rescind any embargo order until the requirements of this article have been complied with and all costs and expenses incurred in connection therewith have been paid.

(c) Any agricultural liming material found to be in violation of the provisions of this article shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the county in which such agricultural liming material is located. If the court orders the condemnation of such material it shall be disposed of in a manner consistent with the quality of
the agricultural liming material and the laws of the state. In no instance shall the disposition of said agricultural liming material be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said agricultural liming material or for permission to process or relabel said agricultural liming material to bring it in compliance with this article.


(a) A registrant shall pay a deficiency assessment in accordance with the provisions of this section for each lot of agricultural liming material found to be deficient in its guaranteed analysis. Deficiencies existing in more than one component shall be considered additional violations.

(b) When the calcium carbonate equivalent is found to be over five percent deficient from the stated guarantee, the registrant shall pay a deficiency assessment equal to two times the actual cash value of the deficiency based on the retail price per ton at the distribution point where the official sample was collected. The cash value of the deficiency is calculated by multiplying the actual percent deficiency, less the five percent taken, times the retail price per ton, times the tons in the lot sampled. The minimum assessed penalty shall be fifty cents per ton in the lot sampled.

(c) When the product is found to be over five percent deficient in one or more of the guarantees for fineness classification, a penalty shall be assessed at one dollar per ton in the lot sampled.

(d) When the product is found to be over ten percent deficient for one or more of the following guarantees: Calcium oxide, magnesium oxide, calcium carbonate, magnesium carbonate, total elemental calcium or total elemental magnesium, a penalty shall be assessed at one dollar per ton in the lot sampled.

(e) Such deficiency assessment shall be paid to the ultimate consumer of the product, with receipts for the
payment thereof being delivered to the commissioner as
evidence of payment being made. If said ultimate
consumer is not known, the penalty assessed shall be
paid to the commissioner and deposited as set forth in
section nine of this article.

(f) If any deficiency assessment has not been paid
within sixty days of the notice of such assessment, then
a late payment penalty of ten percent of the original
penalty assessment will be added for each one hundred
eighty days such assessment remains unpaid.


The commissioner is authorized to issue, after public
hearing following due notice, and in accordance with the
provisions of chapter twenty-nine-a of this code, such
regulations in addition to any others mentioned else-
where in the article, as he deems necessary to imple-
ment the full intent and meaning of this article,
including, but not limited to, minimum acceptable
fineness classifications and minimum acceptable cal-
cium carbonate equivalents for agricultural liming
materials.


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


Any person violating any of the provisions of this
article or the regulations issued thereunder shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than two hundred nor more than
three hundred dollars for the first offense and not less
than three hundred nor more than one thousand dollars
for each subsequent offense.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 12th day of , 1990.

Governor