

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



ENROLLED

Com. Sub. for
HOUSE BILL No. 4590

(By Mr. Del. M. Burke + Stemple)



Passed March 5, 1990

In Effect 90 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4590
(By DELEGATES M. BURKE AND STEMPLE)

[Passed March 5, 1990; in effect ninety 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.

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

- 1 As used in this article:
- 2 (a) "Agricultural liming material" means a product

3 with calcium or calcium and magnesium compounds
4 which are capable of neutralizing soil acidity and which
5 are intended to be used to neutralize soil acidity.

6 (b) "Brand" means the term, designation, trademark,
7 product name or other specific designation under which
8 individual agricultural liming materials are offered for
9 sale.

10 (c) "Bulk" means agricultural liming materials in
11 nonpackaged form.

12 (d) "Burnt lime" means a material, made from
13 limestone which consists essentially of calcium oxide or
14 a combination of calcium oxide with magnesium oxide.

15 (e) "Calcium carbonate equivalent" means the acid
16 neutralizing capacity of agricultural liming material
17 expressed as the weight percentage of calcium
18 carbonate.

19 (f) "Commissioner" means the commissioner of agri-
20 culture of the state of West Virginia or his duly
21 authorized agent.

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

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

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

32 (j) "Fineness classification" means the designation
33 given to the product by the percentage by weight of the
34 material which will pass U.S. standard sieves of specific
35 sizes.

36 (k) "Ground shells" means a material obtained by
37 grinding the shells of mollusks.

38 (l) "High calcic liming material" means an agricultu-
39 ral liming material containing at least twenty-five

40 percent calcium and at least ninety-one percent of the
41 total calcium and magnesium is calcium.

42 (m) "High magnesian liming material" means an
43 agricultural liming material containing at least six
44 percent magnesium.

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

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

53 (p) "Limestone" means a material consisting essen-
54 tially of calcium carbonate with magnesium carbonate
55 capable of neutralizing soil acidity.

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

59 (r) "Percent or percentage" means percent or percen-
60 tage by weight.

61 (s) "Person" means any individual, partnership,
62 association, fiduciary, firm, corporation or any organ-
63 ized group of persons whether incorporated or not.

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

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

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

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

74 (x) "Weight" means the weight of undried liming
75 material as offered for sale.

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

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

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

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

14 (d) All registrations shall expire at the end of the
15 calendar year of issue unless sooner revoked by the
16 commissioner 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 sale
2 in the state any agricultural liming materials which do
3 not have affixed to the outside of each package in a
4 conspicuous manner a plainly printed, stamped or
5 otherwise marked label, tag or statement, or in the case
6 of bulk sales, a delivery invoice including at least the
7 following:

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

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

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

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

16 (5) The minimum percentage of calcium oxide and
17 magnesium oxide or calcium carbonate and magnesium
18 carbonate or total elemental calcium and total elemental
19 magnesium.

20 (6) The calcium carbonate equivalent as determined
21 by methods prescribed by the association of official
22 analytical chemists.

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

25 (8) The fineness classification of the material.

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

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

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

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

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

6 (b) Within thirty days following the thirtieth day of
7 June and the thirty-first day of December of each year,
8 each registrant and distributor shall submit on a form
9 furnished by the commissioner a summary of tons of
10 each agricultural liming material sold or distributed by

11 him in the state during the previous six months' period.
12 Such report of tonnage shall be accompanied by
13 payment of an inspection fee at the rate of five cents per
14 ton. If such tonnage, or portion thereof, has been paid
15 by another person, documentation by invoice must
16 accompany such report. The minimum semiannual
17 payment shall be ten dollars. The minimum fee is
18 waived if the total amount of the semi-annual inspection
19 fee due is two dollars or less. A penalty of ten percent
20 of the fees due or ten dollars whichever is greater shall
21 be assessed a registrant or distributor whose report is
22 not received by the fifteenth day of August and the
23 fifteenth day of February each calendar year.

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

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

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

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

14 (c) The results of official analyses of agricultural
15 liming materials shall be distributed by the commis-
16 sioner as he may deem necessary to carry out the
17 enforcement of this article.

18 (d) The commissioner shall on request, provide the
19 registrant with a portion of the official sample:
20 *Provided*, That the request be made within thirty days
21 of the assessment of a violation.

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

**§19-15A-6. Embargo; suspend or cancellation of registra-
tion; seizure of materials.**

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

13 (b) The commissioner may issue an embargo order to
14 the owner or custodian of any lot of agricultural liming
15 material when he finds said agricultural liming mate-
16 rial is being offered or exposed for sale in violation of
17 any of the provisions of this article or the regulations
18 issued thereunder and such order shall remain in effect
19 until it has been rescinded in writing by the commis-
20 sioner: *Provided*, That the commissioner shall not
21 rescind any embargo order until the requirements of
22 this article have been complied with and all costs and
23 expenses incurred in connection therewith have been
24 paid.

25 (c) Any agricultural liming material found to be in
26 violation of the provisions of this article shall be subject
27 to seizure on complaint of the commissioner to a court
28 of competent jurisdiction in the county in which such
29 agricultural liming material is located. If the court
30 orders the condemnation of such material it shall be
31 disposed of in a manner consistent with the quality of

32 the agricultural liming material and the laws of the
33 state. In no instance shall the disposition of said
34 agricultural liming material be ordered by the court
35 without first giving the claimant an opportunity to
36 apply to the court for release of said agricultural liming
37 material or for permission to process or relabel said
38 agricultural liming material to bring it in compliance
39 with this article.

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

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

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

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

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

28 (e) Such deficiency assessment shall be paid to the
29 ultimate consumer of the product, with receipts for the

30 payment thereof being delivered to the commissioner as
31 evidence of payment being made. If said ultimate
32 consumer is not known, the penalty assessed shall be
33 paid to the commissioner and deposited as set forth in
34 section nine of this article.

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

§19-15A-8. Regulations.

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

§19-15A-9. Lime fund.

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

§19-15A-10. Penalties.

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

Enr. Com. Sub. for H. B. 4590] 10

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

Frederick L. Kern
Chairman Senate Committee

Baron V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Russell E. Adams
Clerk of the Senate

Donald E. Kopp
Clerk of the House of Delegates

Nell Burdette
President of the Senate

W. W. [Signature]
Speaker of the House of Delegates

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

Caston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/9/90

Time 5:36 PM

RECEIVED

1990 MAR 12 PM 4:31

OFFICE OF THE GOVERNOR
SECRETARY OF STATE