WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 431

(By Senators Edgell and Love)

[Passed March 5, 2007; in effect from passage.]
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Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.


As used in this article:

(a) "Agricultural liming material" means a product that contains calcium and magnesium carbonate, hydroxide or oxide which are capable of neutralizing 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 materials in nonpackaged form.

(d) "Burnt lime" means a calcined material comprised chiefly of calcium oxide in natural association with lesser amounts of magnesium, and which is capable of slaking with water.

(e) "Calcium carbonate equivalent" (CCE) is an expression of the acid-neutralizing capacity of an agricultural liming material relative to that of a pure calcium carbonate, expressed as a percentage.

(f) "Commissioner" means the Commissioner of Agriculture of the State of West Virginia or his or her duly authorized agent.

(g) "Distributor" means any person who sells or offers for sale agricultural liming products that are registered pursuant to this article, but does not include persons
who retail registered products in nonbulk form 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" means 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.

(o) "Industrial coproduct" means any industrial waste
or by-product containing calcium or calcium and
magnesium in forms that will neutralize soil acidity
which may be designated by prefixing the name of the
industry or process by which it is produced, including,
but not limited to: Gas-house lime, tanners' lime, acetylene lime-waste, lime-kin ashes and calcium silicate.

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

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

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

(s) "Percent or percentage" means a part of a whole expressed in hundredths by weight.

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

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

(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) Agricultural liming material may not 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 registration fee for each brand of the agricultural liming material registered and a registration fee from all distributors of agricultural liming materials. The commissioner shall set the registration fees by legislative rule.

(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.

(e) Valid registrants of agricultural liming materials are exempt from obtaining a distributors permit, unless distributing another registrants product.


(a) A person may not 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.

(6) The calcium carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists International (AOAC).

(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) of this section 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 may 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 agricultural liming
material may not 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) Each sales invoice prepared in normal course of
business by either a registrant or distributor shall
reflect the amount of the inspection fee and the name of
the payor.

(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
each registrant and distributor in the state during the
previous six months' period. The report of tonnage
shall be accompanied by payment of an inspection fee
as established by legislative rule. If the tonnage, or
portion thereof, has been paid by another person,
documentation by invoice must accompany such report.
The semiannual payment and late fee shall be
(c) The commissioner shall publish annually on the Department of Agriculture's website a composite report showing the net tons of agricultural liming material sold in this state during the preceding period. This report may not divulge information that can be related to the business of any individual registrant.

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

(a) The commissioner shall audit, inspect, sample, analyze and test agricultural liming materials used, sold or offered for sale within the state as he or she considers necessary to determine whether the agricultural liming materials are in compliance with the provisions of this article. For this purpose the commissioner may 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 commissioner and guided by the AOAC procedures.

(c) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the commissioner as he or she considers 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 is made within thirty days of the assessment of a violation.
(e) In determining whether any agricultural liming material is deficient in guarantee, the commissioner shall be guided solely by the official sample.

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

(a) The commissioner may suspend or cancel the registration of any brand of agricultural liming material and may 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 related rule: 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 or she finds said agricultural liming material is being offered or exposed for sale in violation of any of the provisions of this article or related rule. The order shall remain in effect until it has been rescinded in writing by the commissioner: Provided, That the commissioner may not rescind any embargo order until the requirements of this article have been complied with and all related costs and expenses have been paid.

(c) Any agricultural liming material found to be in violation of the provisions of this article is 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. The court may not order the disposition of agricultural liming material without first giving the owner or custodian an opportunity to apply to the court for release of the agricultural liming material or for permission to process or relabel the 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) A registrant shall pay the deficiency assessment to the ultimate consumer of the product and deliver receipts for the payment to the commissioner. If the 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.

(c) If a deficiency assessment has not been paid within sixty days of the notice of the assessment, then a late payment penalty, as established by legislative rule, will be added for each one hundred eighty days that the assessment remains unpaid.

The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The minimum acceptable fineness classifications;

(2) The minimum acceptable calcium carbonate equivalents for agricultural liming materials; and

(3) The establishment of fees required by this article.


Any fees and penalties collected under the provisions of this article shall be deposited with the State Treasurer in a special revenue account known as the Agricultural Fee Fund as established in article one, chapter nineteen of this code.


Any person violating any of the provisions of this article or related rule shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred dollars nor more than three hundred dollars for the first offense and not less than three hundred dollars 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

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this 28th Day of May, 2007.

Governor