

SB 431 S

FILED

2007 MAR 28 PM 2: 39

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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.]

FILED

2007 MAR 28 PM 2: 39

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ENROLLED

**Senate Bill No. 431**

(BY SENATORS EDGELL AND LOVE)

[Passed March 5, 2007; in effect from passage.]

AN ACT to amend and reenact §19-15A-1, §19-15A-2, §19-15A-3, §19-15A-4, §19-15A-5, §19-15A-6, §19-15A-7, §19-15A-8, §19-15A-9 and §19-15A-10 of the Code of West Virginia, 1931, as amended, all relating to the regulation of agricultural liming materials; and updating definitions.

*Be it enacted by the Legislature of West Virginia:*

That §19-15A-1, §19-15A-2, §19-15A-3, §19-15A-4, §19-15A-5, §19-15A-6, §19-15A-7, §19-15A-8, §19-15A-9 and §19-15A-10 of the Code of West Virginia, 1931, 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 that contains calcium and magnesium carbonate,  
4 hydroxide or oxide which are capable of neutralizing  
5 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 materials in nonpackaged form.

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

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

19 (f) "Commissioner" means the Commissioner of  
20 Agriculture of the State of West Virginia or his or her  
21 duly 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, but does not include persons

25 who retail registered products in nonbulk form 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  
32 product.

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

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

38 (l) "High calcic liming material" means an  
39 agricultural liming material containing at least  
40 twenty-five percent calcium and at least ninety-one  
41 percent of the 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.

47 (o) "Industrial coproduct" means any industrial waste  
48 or by-product containing calcium or calcium and  
49 magnesium in forms that will neutralize soil acidity  
50 which may be designated by prefixing the name of the  
51 industry or process by which it is produced, including,

52 but not limited to: Gas-house lime, tanners' lime,  
53 acetylene lime-waste, lime-kin ashes and calcium  
54 silicate.

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

1 (a) A person may not sell, offer to sell or expose for  
2 sale in the state any agricultural liming materials which  
3 do 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 material.

15 (5) The minimum percentage of calcium oxide and  
16 magnesium oxide or calcium carbonate and magnesium  
17 carbonate.

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

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

23 (8) The fineness classification of the material.

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

29 (c) No information or statement may appear on any

30 package, label, delivery invoice or advertisement which  
31 gives a false or misleading impression to the purchaser  
32 as to the quality, analysis, type or composition of the  
33 liming material.

34 (d) When agricultural liming material has been  
35 adulterated subsequent to packaging, labeling or  
36 loading thereof and before delivery has been made to  
37 the consumer, conspicuous, plainly worded notice to  
38 that effect shall be affixed by the vendor to the package  
39 or delivery invoice to identify the kind and degree of  
40 adulteration therein: *Provided*, That agricultural liming  
41 material may not be sold or offered for sale in the state  
42 which contains toxic materials in quantities injurious to  
43 plants or animals when applied according to directions.

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

1 (a) Each sales invoice prepared in normal course of  
2 business by either a registrant or distributor shall  
3 reflect the amount of the inspection fee and the name of  
4 the payor.

5 (b) Within thirty days following the thirtieth day of  
6 June and the thirty-first day of December of each year,  
7 each registrant and distributor shall submit on a form  
8 furnished by the commissioner a summary of tons of  
9 each agricultural liming material sold or distributed by  
10 each registrant and distributor in the state during the  
11 previous six months' period. The report of tonnage  
12 shall be accompanied by payment of an inspection fee  
13 as established by legislative rule. If the tonnage, or  
14 portion thereof, has been paid by another person,  
15 documentation by invoice must accompany such report.  
16 The semiannual payment and late fee shall be



17 established by legislative rule.

18 (c) The commissioner shall publish annually on the  
19 Department of Agriculture's website a composite report  
20 showing the net tons of agricultural liming material sold  
21 in this state during the preceding period. This report  
22 may not divulge information that can be related to the  
23 business of any individual registrant.

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

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

10 (b) The methods of analysis and sampling shall be  
11 those approved by the commissioner and guided by the  
12 AOAC procedures.

13 (c) The results of official analyses of agricultural  
14 liming materials and portions of official samples shall  
15 be distributed by the commissioner as he or she  
16 considers necessary to carry out the enforcement of this  
17 article.

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

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

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

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

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

23 (c) Any agricultural liming material found to be in  
24 violation of the provisions of this article is subject to  
25 seizure on complaint of the commissioner to a court of  
26 competent jurisdiction in the county in which such

27 agricultural liming material is located. If the court  
28 orders the condemnation of such material it shall be  
29 disposed of in a manner consistent with the quality of  
30 the agricultural liming material and the laws of the  
31 state. The court may not order the disposition of  
32 agricultural liming material without first giving the  
33 owner or custodian an opportunity to apply to the court  
34 for release of the agricultural liming material or for  
35 permission to process or relabel the agricultural liming  
36 material to bring it in compliance 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) A registrant shall pay the deficiency assessment to  
8 the ultimate consumer of the product and deliver  
9 receipts for the payment to the commissioner. If the  
10 ultimate consumer is not known, the penalty assessed  
11 shall be paid to the commissioner and deposited as set  
12 forth in section nine of this article.

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

**§19-15A-8. Rule-making authority.**

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

6 (1) The minimum acceptable fineness classifications;

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

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

**§19-15A-9. Disposition of fees.**

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

**§19-15A-10. Penalties.**

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

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

*Ed White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Parrel Holmes*  
.....  
Clerk of the Senate

*Gregg A. Fox*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *28th* Day of *March* ..... 2007.

*[Signature]*  
.....  
Governor

MAR 20 2007

Time 3:40 pm