

upon the same basis as funds used for the financing of a new school plant project utilized for a similar purpose.

Passed the House March 20, 1967.

Passed the Senate March 31, 1967.

Approved by the Governor April 7, 1967.

CHAPTER 22.

[Substitute House Bill No. 146.]

WASHINGTON COMMERCIAL FERTILIZER ACT.

AN ACT relating to commercial fertilizers, including customer-formula fertilizers; repealing sections 15.54.010 through 15.54.250 and section 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and RCW 15.54.900; and providing penalties.

Be it enacted by the Legislature of the State of Washington:

Section 1. Terms used in this act shall have the meaning given to them in sections 2 through 17 of this act unless where used the context thereof shall clearly indicate to the contrary.

Commercial fertilizer act. Application of definitions.

Sec. 2. "Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures.

"Commercial fertilizer" defined.

Sec. 3. "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

"Specialty fertilizer" defined.

Sec. 4. "Bulk fertilizer" means commercial fertilizer distributed in a nonpackage form.

"Bulk fertilizer" defined.

Commercial Fertilizer Act —Definition— "Brand".

Sec. 5. "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

"Guaranteed analysis".

Sec. 6. (1) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

- Total nitrogen (N) percent
- Available phosphoric acid (P₂O₅) percent
- Soluble potash (K₂O) percent

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(2) For unacidulated mineral phosphatic materials and basic slag, the guaranteed analysis shall contain both total and available phosphoric acid and the degree of fineness. For bone, tankage, manipulated animal and vegetable manures, and other organic phosphatic materials, the guaranteed analysis shall contain total phosphoric acid.

(3) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as permitted or required by regulation of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(4) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the minimum total neutralizing power expressed in terms of calcium carbonate; and the percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve.

(5) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO₄.2H₂O) shall be given along with the percentage of total sulfur.

"Grade".

Sec. 7. "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble pot-

- ash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis", unless otherwise allowed by a regulation adopted by the department. Definitions.
- Sec. 8. "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis. "Total nutrients".
- Sec. 9. "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium and/or magnesium carbonate, hydroxide, or oxide, singly or combined. "Lime".
- Sec. 10. "Ton" means the net weight of two thousand pounds avoirdupois. "Ton".
- Sec. 11. "Percent" or "percentage" means the percentage by weight. "Percent" or "percentage".
- Sec. 12. "Department" means the department of agriculture of the state of Washington or its duly authorized representative. "Department".
- Sec. 13. "Person" means a natural person, individual, firm, partnership, corporation, company, society, or association. "Person".
- Sec. 14. "Customer-formula fertilizer" means a mixture of commercial fertilizer and/or materials of which each batch is mixed according to the specific instructions of the final purchaser. "Customer-formula fertilizer".
- Sec. 15. "Registrant" means the person who registers commercial fertilizer under the provisions of this act. "Registrant".
- Sec. 16. "Official sample" means any sample of commercial fertilizer taken by the department and designated as "official" by the department. "Official sample".
- Sec. 17. "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend "Distribute".

Commercial
Fertilizer Act
—Definition.

commercial fertilizer, or to offer for sale, sell, barter, or otherwise supply commercial fertilizer in this state.

“Distributor”.

Sec. 18. “Distributor” means any person who distributes.

Administra-
tion and
enforcement
of act.

Sec. 19. The department shall administer, enforce, and carry out the provisions of this act and may adopt rules necessary to carry out its purpose. The adoption of rules shall be subject to a public hearing and all other applicable provisions of Chapter 34.04 RCW (Administrative Procedure Act), as enacted or hereafter amended.

Registration
required—
Application.

Sec. 20. (1) Each brand and grade of commercial fertilizer shall be registered before being distributed in this state. Companies planning to mix customer-formula fertilizers shall include the statement “Customer-Formula Grade Mixes” under the column headed GRADES on the brand registration application form. The application for registration shall be submitted to the department on forms furnished by the department, and shall be accompanied by a fee of twenty-five dollars per brand. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31st of each year. The application shall include the following information:

- (a) The brand name;
- (b) Declaration of guaranteed analyses of formulations to be sold;
- (c) The name and address of the registrant and the manufacturer; and
- (d) The sources from which the guaranteed plant nutrients are derived.

A label or labels which shall comply with section 22 of this act shall accompany said application.

- (2) A distributor shall not be required to regis-

ter any brand of commercial fertilizer which is already registered under this act by another person.

(3) A distributor shall not be required to register each grade of a customer-formula fertilizer: *Provided*, That such grade shall be distributed under a registered brand.

(4) If an application for renewal of the brand registration provided for in this section is not filed prior to January 1st of any one year, a penalty of ten dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal brand registration shall be issued: *Provided*, That such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed this brand subsequent to the expiration of his prior registration.

Sec. 21. The department shall examine the registration application form and labels for conformance with the requirements of this act. If the application and appropriate labels are in proper form and contain the required information, the particular brand and grade of commercial fertilizer shall be registered by the department and a certificate of registration shall be issued to the applicant. The department may refuse registration, or cancel the registration, of any brand or grade of commercial fertilizer, the distribution of which would be in violation of any provisions of this act.

Application—
Examination—
Violations—
Effect.

Sec. 22. (1) Any commercial fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

Label require-
ments.

- (a) The net weight;
- (b) The brand and grade;
- (c) The guaranteed analysis; and

Commercial
Fertilizer Act
—Label
requirements.

(d) The name and address of the registrant, or manufacturer, or both.

(2) If distributed in bulk, a written or printed statement of the information required by subsection (1) above shall accompany delivery and be supplied to the purchaser at the time of delivery.

(3) Each delivery of a customer-formula fertilizer shall be subject to containing those ingredients specified by the purchaser, which ingredients shall be shown on the statement or invoice with the amount contained therein, and a record of all invoices of customer-formula grade mixes shall be kept by the registrant for a period of six months and shall be available to the department upon request: *Provided*, That each such delivery shall be accompanied by either a statement, invoice, a delivery slip, or a label if bagged, containing the following information: The net weight; the brand; the guaranteed analysis which may be stated to the nearest tenth of a percent or to the next lower whole number; the name and address of the registrant, or manufacturer, or both; and the name and address of the purchaser.

Inspection fee.

Sec. 23. (1) Each distributor of a commercial fertilizer in this state shall pay to the department an inspection fee of five cents per ton of lime and ten cents per ton of all other commercial fertilizer sold by such person during the year beginning January 1st and ending December 31st.

(2) In computing the tonnage on which the inspection fee must be paid, sales of commercial fertilizers to fertilizer manufacturers, sales of commercial fertilizers in packages weighing five pounds net or less, and sales of commercial fertilizers for shipment to points outside this state may be excluded.

(3) When more than one distributor is involved in the distribution of a commercial fertilizer, the last registrant who distributes to a nonregistrant

(dealer or consumer) is responsible for reporting the tonnage and paying the inspection fee, unless the reporting and paying of fees have been made by a prior distributor of the fertilizer.

Sec. 24. (1) Each person made responsible by this act for the payment of inspection fees for commercial fertilizers sold in this state shall file a report with the department on October 1st, January 1st, April 1st, and July 1st of each year showing the number of tons of such commercial fertilizers sold during the three calendar months immediately preceding the date the report is due. The department may accept sales records or other records accurately reflecting the tonnage sold in verifying such reports. The proper inspection fee shall be remitted with the report. The person required to file the report and pay the fee shall have a thirty-day period of grace immediately following the day the report and payment are due to file the report, and pay the fee.

Reports—
Penalty for
late fees.

(2) Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a late-collection fee of ten percent, but not less than five dollars, added to the amount due when payment is finally made. The assessment of this late-collection fee shall not prevent the department from taking any other action as provided for in this act.

(3) The report required by subsection (1) hereof shall not be a public record, and it shall be a misdemeanor for any person to divulge any information given in such report which would reveal the business operation of the person making the report: *Provided*, That nothing contained in this subsection shall be construed to prevent or make unlawful the use of information concerning the business operation of a person in any action, suit, or proceeding instituted under the authority of this act, including

Commercial
Fertilizer Act.

any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

Inspection
and analysis
of samples.

Sec. 25. (1) It shall be the duty of the department to inspect, sample, make analysis of, and test commercial fertilizers distributed within this state at such time and place and to such an extent as it may deem necessary to determine whether such fertilizers are in compliance with the provisions of this act. The department is authorized to stop any commercial vehicle transporting fertilizers on the public highways and direct it to the nearest scales approved by the department to check weights of fertilizers being delivered. The department is also authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times in order to have access to commercial fertilizers and to records relating to their distribution.

(2) The methods of sampling and analysis shall be those adopted by the department from officially recognized sources.

(3) The department, in determining for administrative purposes whether a fertilizer is deficient in any component or total nutrients, shall be guided solely by the official sample as defined in section 16 of this act and obtained and analyzed as provided for in this section.

(4) When the inspection and analysis of an official sample has been made, the results of analysis shall be forwarded by the department to the distributor and to the purchaser, if known. Upon request and within thirty days, the department shall furnish to the distributor a portion of the sample concerned.

(5) Analysis of an official sample by the department shall be accepted as prima facie evidence by any court of competent jurisdiction.

Sec. 26. (1) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any one plant nutrient or in total nutrients, penalty shall be assessed in favor of the department in accordance with the following provisions:

Failure
to comply
—Penalty.

(a) A penalty of three times the value of the deficiency, if such deficiency in any one plant nutrient is more than two percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed up to and including ten percent; a penalty of three times the value of the deficiency, if such deficiency in any one plant nutrient is more than three percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed from ten and one-tenth percent to twenty percent; a penalty of three times the value of the deficiency, if such deficiency in any one plant nutrient is more than four percent under guarantee on any one commercial fertilizer in which that plant nutrient is guaranteed twenty and one-tenth percent and above.

(b) A penalty of three times the value of the total nutrient deficiency shall be assessed when such deficiency is more than two percent under the calculated total nutrient guarantee.

(c) When a commercial fertilizer is subject to penalty under both (a) and (b) above, only the larger penalty shall be assessed.

(2) All penalties assessed under this section on any one commercial fertilizer, represented by the sample analyzed, shall be paid to the department within three months after the date of notice from the department to the registrant. The department shall deposit the amount of the penalty into the fertilizer, agricultural mineral and lime account.

(3) Nothing contained in this section shall prevent any person from appealing to a court of compe-

Commercial Fertilizer Act.

tent jurisdiction for a judgment as to the justification of such penalties imposed under subsections (1) and (2) above.

(4) The civil penalties payable in subsections (1) and (2) above shall in no manner be construed as limiting the consumer's right to bring a civil action in damage against the registrant paying said civil penalties.

Determination of commercial values of nutrients.

Sec. 27. For the purpose of initially determining the commercial values to be applied under the provisions of section 26 of this act, the department shall determine from the registrant's sales invoice the values per pound charged for nitrogen, available phosphoric acid, soluble potash, and other plant nutrients. The values so determined shall be used in determining and assessing penalties.

Minimum requirements.

Sec. 28. No superphosphate containing less than eighteen percent of available phosphoric acid, nor any mixed fertilizer in which the sum of the percentage guarantees for the nitrogen, available phosphoric acid, and soluble potash in the mixture is less than twenty percent, shall be sold or offered for sale in this state except for specialty fertilizers and customer-formula mixes: *Provided*, That specialty fertilizers, except manipulated animal and vegetable manures, guaranteeing less than five percent total plant food shall contain on the label specific directions for use, and prior to registration, the department may require proof of the efficacy of the product when used as directed.

Misbranding.

Sec. 29. Any commercial fertilizer is misbranded for the purposes of this act if it carries a false or misleading statement on the container, or the label attached to the container, or if false or misleading statements concerning the fertilizer are disseminated in any manner or by any means.

Sec. 30. It shall be unlawful for any person to:

Violations.

- (1) Distribute a misbranded commercial fertilizer;
 - (2) Fail, refuse, or neglect to place upon or attach to each container of distributed commercial fertilizer a label containing all of the information required by this act;
 - (3) Fail, refuse, or neglect to deliver to a purchaser of bulk commercial fertilizer a statement containing the information required by this act;
 - (4) Distribute a brand of commercial fertilizer which has not been registered with the department;
- or
- (5) Distribute commercial fertilizers containing viable seeds unless serving a desirable purpose and appropriately labeled.

Sec. 31. The department shall publish at least annually and in such form as it may deem proper (1) information concerning the distribution of commercial fertilizers and (2) results of analyses based on official samples as compared with the analyses guaranteed.

Analysis—
Publication.

Sec. 32. The department may issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer to hold said commercial fertilizer at a designated place when the department finds such fertilizer is being offered or exposed for sale in violation of any of the provisions of this act, until this act has been complied with and said commercial fertilizer is released by order in writing of the department. The department shall release the commercial fertilizer so withdrawn when the owner or custodian has complied with the provisions of this act.

"Stop sale, use
or removal"
order—
Enforcement.

Sec. 33. Any lot of commercial fertilizer not in compliance with the provisions of this act shall be subject to seizure on complaint of the department to

Seizure of
noncomplying
lots.

Commercial
Fertilizer Act.

a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this act and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state: *Provided*, That in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this act.

No damages
for seizure
under prob-
able cause.

Sec. 34. No state court shall allow the recovery of damages from administrative action taken or for stop sales or seizures under sections 32 and 33 of this act if the court finds that there was probable cause for such action.

Violation—
Penalty—
Enforcement.

Sec. 35. (1) Any person who violates any provision of this act shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under section 36 of this act.

(2) Nothing in this act shall be considered as requiring the department to report for prosecution or to cancel the registration of a brand or grade or to stop the sale of fertilizers for violations of this act, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this act is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this act for such prosecution, an opportu-

nity shall be given the distributor to present his view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under this act, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond.

Sec. 36. All fees collected under the provisions of this act shall be paid to the state treasurer to be deposited in the fertilizer, agricultural mineral and lime account in the state general fund as provided for in RCW 43.79.330, which fund shall be used only in the enforcement of this act. All moneys collected under the provisions of RCW 15.54.010 through 15.54.250 and 15.54.900 and remaining in such fertilizer, agricultural mineral and lime account on the effective date of this act, shall likewise be used only in the enforcement of this act.

Disposition of fees.

Sec. 37. The director may cooperate with and enter into agreements with other governmental agencies, whether of this state, other states, or agencies of the federal government, and with private associations, in order to carry out the purposes and provisions of this act.

Cooperation with other governmental agencies.

Sec. 38. The enactment of this act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on the effective date of this act.

Existing liabilities not affected by act.

Sec. 39. All registrations and licenses in effect under sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 on the effective date of this act shall continue in full force

Continuation of prior licenses.

Commercial Fertilizer Act. and effect until December 31st, 1967. Any registration that has been paid on the effective date of this act under the requirements of any prior act shall not be refunded.

Effective date. Sec. 40. The effective date of this act is July 1, 1967.

Prior rules—Savings. Sec. 41. The repeal of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and the enactment of this act shall not be deemed to have repealed any rules adopted under the provisions of sections 15.54.010 through 15.54.250 and 15.54.900, chapter 11, Laws of 1961 and chapter 15.54 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. All such rules shall be considered to have been adopted under the provisions of this act.

Short title. Sec. 42. Sections 1 through 42 of this act shall be known as the "Washington Commercial Fertilizer Act".

Repeal. Sec. 43. Sections 15.54.010 through 15.54.250 and section 15.54.900, chapter 11, Laws of 1961 and RCW 15.54.010 through 15.54.250 and 15.54.900 are each repealed.

Severability. Sec. 44. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof, not adjudged invalid or unconstitutional.

Passed the House March 20, 1967.

Passed the Senate March 31, 1967.

Approved by the Governor April 7, 1967.