

Act No. 263
Public Acts of 1994
Approved by the Governor
July 4, 1994
Filed with the Secretary of State
July 5, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senators McManus and Gougeon

ENROLLED SENATE BILL No. 688

AN ACT to amend the title and sections 2 5 6 and 11 of Act No 198 of the Public Acts of 1975 entitled An act to regulate the manufacture distribution sale labeling and advertising of fertilizers and soil conditions to license manufacturers and distributors to register fertilizers to provide a penalty and to repeal certain acts and parts of acts being sections 286 752 286 755 286 756 and 286 761 of the Michigan Compiled Laws and to add sections 12a and 12b

The People of the State of Michigan enact

Section 1 The title and sections 2 5 6 and 11 of Act No 198 of the Public Acts of 1975 being sections 286 752 286 755 286 756 and 286 761 of the Michigan Compiled Laws are amended and sections 12a and 12b are added to read as follows

TITLE

An act to regulate the manufacture distribution sale labeling and advertising of fertilizers and soil conditioners to license manufacturers and distributors to register fertilizers to provide for the protection of groundwater from fertilizer contamination to provide a penalty and to repeal certain acts and parts of acts

Sec 2 As used in this act

(a) Aquifer means a geologic formation group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs

(b) Aquifer sensitivity means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of nitrogen fertilizers into that aquifer

(c) Aquifer sensitivity region means an area in which aquifer sensitivity estimations are sufficiently uniform to warrant their classification as a unit

(d) Brand or product name means a term design or trademark used in connection with 1 or more grades of fertilizer

(e) Bulk fertilizer means fertilizer distributed in a nonpackaged form

(f) Custom mixed fertilizer means a mixed fertilizer formulated according to individual specifications furnished by the consumer before mixing

(g) Department means the department of agriculture

(h) Distribute means to import consign sell barter offer for sale solicit orders for sale or otherwise supply fertilizer for sale or use in this state

(i) Fertilizer means a substance containing 1 or more recognized plant nutrients which substance is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth Fertilizer does not include unmanipulated animal and vegetable manures marl lime limestone wood ashes and other materials exempted by rules promulgated under this act

(j) Fertilizer material means any substance containing any recognized plant nutrient which is used as a fertilizer or for compounding mixed fertilizers

(k) Grade means the percentage guarantee of total nitrogen available phosphorus or available phosphoric acid P_2O_5 and soluble potassium or soluble potash K_2O of a fertilizer and shall be stated in the same order as listed in this subdivision Indication of grade does not apply to peat or peat moss or soil conditioners

(l) Groundwater means underground water within the zone of saturation

(m) Groundwater stewardship practices means any of a set of voluntary practices adopted by the commission of agriculture pursuant to the groundwater and freshwater protection act Act No 247 of the Public Acts of 1993 being sections 286 851 to 286 868 of the Michigan Compiled Laws designed to protect groundwater from contamination by fertilizers

(n) Guaranteed analysis means the minimum percentage of each plant nutrient guaranteed or claimed to be present

(o) Label means any written printed or graphic matter on or attached to packaged fertilizer or which is used to identify fertilizer distributed in bulk or held in bulk storage

(p) Labeling means all labels and other written printed or graphic matter upon or accompanying fertilizer at any time and includes advertising or sales literature

(q) Manufacture means to process granulate compound produce mix blend or alter the composition of fertilizer or fertilizer materials

(r) Maximum contaminant level means that term as it is defined in title XIV of the public health service act chapter 373 88 Stat 1660 and the regulations promulgated under that act

(s) Mixed fertilizer means a fertilizer containing any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth including mixtures of fertilizer and pesticide

(t) Nitrogen fertilizer means a fertilizer that contains nitrogen as a component

(u) Official sample means a sample of fertilizer taken by a representative of the department of agriculture in accordance with acceptable methods

(v) Package or packaged means any type of product regulated by this act that is distributed in individual containers with the capacity not exceeding 55 gallons for liquids and not exceeding 200 pounds for solids

(w) Percent and percentage means the percentage by weight

(x) Person means an individual partnership association firm corporation or any other legal entity

(y) Rule means a rule promulgated pursuant to the administrative procedures act of 1969 Act No 306 of the Public Acts of 1969 being sections 24 201 to 24 328 of the Michigan Compiled Laws

(z) Soil conditioner means a substance which is used or intended for use solely for the improvement of the physical nature of soil and for which no claims are made for plant nutrients content Soil conditioner does not include guaranteed plant nutrients hormones bacterial inoculants and products used in directly influencing or controlling plant growth

(aa) Specialty fertilizer means any fertilizer distributed primarily for nonfarm use such as use in connection with home gardens lawns shrubbery flowers golf courses parks and cemeteries and may include fertilizers used for research or experimental purposes

(bb) Ton means a net ton of 2 000 pounds avoirdupois

(cc) Use means the loading mixing applying storing transporting or disposing of a fertilizer

Sec 5 (1) A person shall not manufacture or distribute fertilizer in this state except specialty fertilizer and soil conditioners until the appropriate groundwater protection fee provided in section 15 of the groundwater and freshwater protection act Act No 247 of the Public Acts of 1993 being section 286 865 of the Michigan Compiled Laws has been submitted and a license to manufacture or distribute has been obtained by the manufacturer or distributor from the department upon payment of a fee of \$100 00

(a) For each fixed location at which fertilizer is manufactured in this state

(b) For each mobile unit used to manufacture fertilizer in this state

(c) For each location out of the state that applies labeling showing out of state origin of fertilizer distributed in this state to nonlicensees

All licenses expire on December 31 of each year

(2) An application for a license to manufacture or distribute fertilizer shall include

(a) The name and address of the applicant

(b) The name and address of each bulk distribution point in the state not licensed for fertilizer manufacture or distribution. The name and address shown on the license shall be shown on all labels and pertinent invoices and bulk storage for fertilizers distributed by the licensee in this state

(3) The licensee shall inform the director in writing of additional distribution points established during the period of the license

(4) A distributor shall not be required to obtain a license if the distributor is selling fertilizer of a distributor or a manufacturer licensed under this act

Sec 6 A person shall not distribute a specialty fertilizer or soil conditioner until it is registered by the manufacturer or distributor with the department and the appropriate groundwater protection fees provided for in section 15 of the groundwater and freshwater protection act. Act No. 247 of the Public Acts of 1993 being section 286 865 of the Michigan Compiled Laws have been submitted. An application in duplicate listing each brand and product name of each grade of specialty fertilizer or soil conditioner shall be made on a form furnished by the director and shall be accompanied with a fee of \$25.00 for each brand and product name of each grade. Labels for each brand and product name of each grade shall accompany the application. Upon approval of an application by the director a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year

Sec 11 (1) The department shall inspect, sample and analyze fertilizers and soil conditioners distributed within this state at a time and place and to the extent necessary to determine compliance with this act

(2) Department representatives and inspectors shall have free access during regular business hours to all premises where fertilizers or soil conditioners are manufactured, sold or stored and to all trucks or other vehicles and vessels used in the transportation of a fertilizer or soil conditioner in this state to determine compliance with this act. Department representatives and inspectors may stop any conveyance transporting fertilizer or soil conditioner for the purpose of inspecting and sampling the products and examining their labeling

(3) A manufacturer or distributor of fertilizer or soil conditioner shall submit to the department upon request product samples, copies of labeling or any other data or information that the department may request concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by them within this state

(4) The director may upon reasonable notice require a person to furnish any information relating to the identification, nature and quantity of fertilizers that are or have been used on a particular site and current or past practices that may have affected groundwater quality. Information required under this subsection is confidential business information and is not subject to the freedom of information act. Act No. 442 of the Public Acts of 1976 being sections 15 231 to 15 246 of the Michigan Compiled Laws

Sec 12a (1) Upon confirming the presence of nitrate in groundwater in concentration exceeding 50% of the maximum contaminant level for nitrates in 20% of drinking water wells associated with an aquifer sensitivity region or fertilizer use activity, the director shall provide educational materials to fertilizer users within that region and may do 1 or more of the following

(a) Establish a regional stewardship team to assist in the coordination of local activities designed to prevent further contamination of groundwater and to identify all probable sources of nitrate

(b) Conduct further monitoring to determine the concentration and spatial distribution of nitrates in the aquifer

(c) Perform an evaluation of activities in the monitoring region to determine the sources of nitrate that may have contributed to the contamination

(d) Implement a stewardship program in the aquifer sensitivity region pursuant to the groundwater and freshwater protection act. Act No. 247 of the Public Acts of 1993 being sections 286 851 to 286 868 of the Michigan Compiled Laws

(e) Assist the regional stewardship team in designing a regional plan to prevent further contamination of groundwater by fertilizer use activities which must include an assessment of all probable sources of nitrates

(f) Establish a program that provides incentives for users to increase nitrogen use efficiency

(2) Upon approval of a regional plan by the director, the regional stewardship team is eligible to receive grants from the freshwater protection fund as established by Act No. 247 of the Public Acts of 1993 for implementation of the plan

(3) The director may upon written request authorize persons to land apply materials containing fertilizers at agronomic rates. This authorization shall prescribe appropriate operational control activities to protect the application location and shall identify both the location of remediation and the location or locations where such a land application will take place

Sec 12b The department shall have the authority to promulgate rules regarding the bulk storage of fertilizers

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor