

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5866**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 8501 and 8511 (MCL 324.8501 and 324.8511),
as added by 1995 PA 60, and by adding section 8517.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8501. As used in this part:

2 (A) "ADULTERATED PRODUCT" MEANS A PRODUCT WHICH CONTAINS ANY
3 DELETERIOUS OR HARMFUL SUBSTANCE IN SUFFICIENT AMOUNT TO RENDER
4 IT INJURIOUS TO BENEFICIAL PLANT LIFE, ANIMALS, HUMANS, AQUATIC
5 LIFE, SOIL OR WATER WHEN APPLIED IN ACCORDANCE WITH DIRECTIONS
6 FOR USE ON THE LABEL, OR IF ADEQUATE WARNINGS STATEMENTS OR
7 DIRECTIONS FOR USE WHICH MAY BE NECESSARY TO PROTECT PLANT LIFE,
8 ANIMALS, HUMANS, AQUATIC LIFE, SOIL OR WATER ARE NOT SHOWN ON THE
9 LABEL.

HB 5866, As Passed Senate, July 1, 1998

House Bill No. 5866

2

1 (B) ~~(a)~~ "Aquifer" means a geologic formation, group of
2 formations, or part of a formation capable of yielding a
3 significant amount of groundwater to wells or springs.

4 (C) ~~(b)~~ "Aquifer sensitivity" means a hydrogeologic func-
5 tion representing the inherent abilities of materials surrounding
6 the aquifer to attenuate the movement of nitrogen fertilizers
7 into that aquifer.

8 (D) ~~(c)~~ "Aquifer sensitivity region" means an area in
9 which aquifer sensitivity estimations are sufficiently uniform to
10 warrant their classification as a unit.

11 (E) ~~(d)~~ "Brand or product name" means a term, design, or
12 trademark used in connection with 1 or more grades of
13 fertilizer.

14 (F) ~~(e)~~ "Bulk fertilizer" means fertilizer distributed in
15 a nonpackaged form.

16 (G) ~~(f)~~ "Custom mixed fertilizer" means a mixed fertilizer
17 formulated according to individual specifications furnished by
18 the consumer before mixing.

19 (H) ~~(g)~~ "Department" means the department of agriculture.

20 (I) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF AGRI-
21 CULTURE OR HIS OR HER DESIGNEE.

22 (J) ~~(h)~~ "Distribute" means to import, consign, sell,
23 barter, offer for sale, solicit orders for sale, or otherwise
24 supply fertilizer for sale or use in this state.

25 (K) ~~(i)~~ "Fertilizer" means a substance containing 1 or
26 more recognized plant nutrients, which substance is used for its
27 plant nutrient content and which is designed for use, or claimed

HB 5866, As Passed Senate, July 1, 1998

House Bill No. 5866

3

1 to have value, in promoting plant growth. Fertilizer does not
2 include unmanipulated animal and vegetable manures, marl, lime,
3 limestone, wood ashes, and other materials exempted by rules
4 promulgated under this part.

5 (I) ~~(j)~~ "Fertilizer material" means any substance contain-
6 ing any recognized plant nutrient, which is used as a fertilizer
7 or for compounding mixed fertilizers.

8 (M) ~~(k)~~ "Grade" means the percentage guarantee of total
9 nitrogen, available phosphorus, or available phosphoric acid,
10 PWOT, and soluble potassium, or soluble potash, KWO, of a fertil-
11 izer and shall be stated in the same order as listed in this
12 subdivision. Indication of grade does not apply to peat or peat
13 moss or soil conditioners.

14 (N) ~~(l)~~ "Groundwater" means underground water within the
15 zone of saturation.

16 (O) ~~(m)~~ "Groundwater stewardship practices" means any of a
17 set of voluntary practices adopted by the commission of agricul-
18 ture pursuant to part 87, designed to protect groundwater from
19 contamination by fertilizers.

20 (P) ~~(n)~~ "Guaranteed analysis" means the minimum percentage
21 of each plant nutrient guaranteed or claimed to be present.

22 (Q) ~~(o)~~ "Label" means any written, printed, or graphic
23 matter on or attached to packaged fertilizer or used to identify
24 fertilizer distributed in bulk or held in bulk storage.

25 (R) ~~(p)~~ "Labeling" means all labels and other written,
26 printed, or graphic matter upon or accompanying fertilizer at any
27 time, and includes advertising or sales literature.

HB 5866, As Passed Senate, July 1, 1998

House Bill No. 5866

4

1 (S) ~~(q)~~ "Manufacture" means to process, granulate,
2 compound, produce, mix, blend, or alter the composition of fer-
3 tilizer or fertilizer materials.

4 (T) ~~(r)~~ "Maximum contaminant level" means that term as it
5 is defined in title XIV of the public health service act, chapter
6 373, 88 Stat. 1660, and the regulations promulgated under that
7 act.

8 (U) ~~(s)~~ "Mixed fertilizer" means a fertilizer containing
9 any combination or mixture of fertilizer materials designed for
10 use or claimed to have value in promoting plant growth, including
11 mixtures of fertilizer and pesticide.

12 (V) ~~(t)~~ "Nitrogen fertilizer" means a fertilizer that con-
13 tains nitrogen as a component.

14 (W) ~~(u)~~ "Official sample" means a sample of fertilizer
15 taken by a representative of the department of agriculture in
16 accordance with acceptable methods.

17 (X) "ORDER" MEANS A CEASE AND DESIST ORDER ISSUED UNDER SEC-
18 TION 8511.

19 (Y) ~~(v)~~ "Package" or "packaged" means any type of product
20 regulated by this part that is distributed in individual contain-
21 ers with a capacity not exceeding 55 gallons for liquids and not
22 exceeding 200 pounds for solids.

23 (Z) ~~(w)~~ "Percent" and "percentage" mean the percentage by
24 weight.

25 (AA) ~~(x)~~ "Soil conditioner" means a substance that is used
26 or intended for use solely for the improvement of the physical
27 nature of soil and for which no claims are made for plant

HB 5866, As Passed Senate, July 1, 1998

House Bill No. 5866

5

1 nutrients content. Soil conditioner does not include guaranteed
2 plant nutrients, hormones, bacterial inoculants, and products
3 used in directly influencing or controlling plant growth.

4 (BB) ~~(y)~~ "Specialty fertilizer" means any fertilizer dis-
5 tributed primarily for nonfarm use, such as use in connection
6 with home, gardens, lawns, shrubbery, flowers, golf courses,
7 parks, and cemeteries, and may include fertilizers used for
8 research or experimental purposes.

9 (CC) ~~(z)~~ "Ton" means a net ton of 2,000 pounds
10 avoirdupois.

11 (DD) ~~(aa)~~ "Use" means the loading, mixing, applying, stor-
12 ing, transporting, or disposing of a fertilizer.

13 Sec. 8511. (1) The director, ~~of the department,~~ by a duly
14 authorized agent, may select from any package or bulk lot of com-
15 mercial fertilizer or soil conditioner exposed for sale in this
16 state a sample to be used for the purposes of an official analy-
17 sis for comparison with the label affixed to the package or bulk
18 lot on sale. The director ~~of the department, his or her deputy,~~
19 ~~or an authorized agent of the director of the department,~~ may at
20 any time ORDER A PERSON TO CEASE AND DESIST FROM MANUFACTURING,
21 STORING, DISTRIBUTING, SELLING, OR REGISTERING A PRODUCT REGU-
22 LATED BY THIS PART, OR MAY seize or stop the sale of a fertilizer
23 or soil conditioner that is misbranded OR ADULTERATED, fails to
24 meet a LABEL CLAIM OR guarantee, is being manufactured or dis-
25 tributed by an unlicensed person, or otherwise fails to comply
26 with this part.

HB 5866, As Passed Senate, July 1, 1998

HB 5866 as amended July 1, 1998

6

1 (2) AN ORDER SHALL BE WRITTEN AND SHALL INFORM THE
2 MANUFACTURER, STORAGE OPERATOR, DISTRIBUTOR, SELLER, OR
3 REGISTRANT OF THE GROUNDS FOR ISSUANCE OF THE ORDER. THE PERSON
4 RECEIVING THE ORDER SHALL IMMEDIATELY COMPLY WITH THE ORDER.
5 FAILURE TO COMPLY SHALL SUBJECT THE PERSON TO THE PENALTY IMPOSED
6 UNDER THIS PART .

7 (3) THE DIRECTOR SHALL RESCIND THE ORDER IMMEDIATELY UPON
8 BEING SATISFIED BY INSPECTION OF COMPLIANCE WITH THE ORDER. THE
9 INSPECTION SHALL BE CONDUCTED AS SOON AS POSSIBLE AT THE VERBAL
10 OR WRITTEN REQUEST OF THE RESPONSIBLE PARTY. THE RESCINDING
11 ORDER OF THE DIRECTOR MAY BE VERBAL AND THE PERSON MAY RELY ON
12 THE VERBAL RESCINDING ORDER. HOWEVER, A VERBAL ORDER SHALL BE
13 FOLLOWED BY A WRITTEN RESCINDING ORDER.

14 (4) THE DIRECTOR MAY ISSUE AND ENFORCE A WRITTEN ORDER PRO-
15 HIBITING THE SALE, USE, OR REMOVAL OF A PRODUCT REGULATED BY THIS
16 PART TO THE OWNER OR CUSTODIAN OF ANY PRODUCT OR PRODUCT LOT AND
17 REQUIRING THE PRODUCT TO BE HELD BY THE OWNER OR CUSTODIAN AT A
18 DESIGNATED PLACE WHEN THE DIRECTOR FINDS THAT THE PRODUCT IS
19 BEING DISTRIBUTED IN VIOLATION OF THIS PART. THE ORDER REMAINS
20 IN EFFECT UNTIL THE DIRECTOR DETERMINES THAT THE PERSON IS COM-
21 PLYING WITH THE LAW OR UNTIL THE VIOLATION HAS BEEN OTHERWISE
22 LEGALLY DISPOSED OF BY WRITTEN AUTHORITY. THE DIRECTOR SHALL
23 RELEASE THE PRODUCT FOR SALE, USE, OR REMOVAL UPON COMPLIANCE
24 WITH THIS PART AND PAYMENT OF ALL COSTS AND EXPENSES INCURRED IN
25 CONNECTION WITH THE ISSUANCE AND ENFORCEMENT OF THE ORDER.

26 (5) ANY PRODUCT OR PRODUCT LOT NOT IN COMPLIANCE WITH THIS
27 PART IS SUBJECT TO SEIZURE UPON AN ACTION FILED BY THE DIRECTOR

HB 5866, As Passed Senate, July 1, 1998

House Bill No. 5866

7

1 IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE
2 PRODUCT IS LOCATED. IF THE COURT FINDS THE PRODUCT TO BE IN VIO-
3 LATION OF THIS PART AND ORDERS THE CONDEMNATION OF THE PRODUCT,
4 THE PRODUCT SHALL BE DISPOSED OF IN ANY MANNER CONSISTENT WITH
5 THE QUALITY OF THE PRODUCT AND THE LAWS OF THIS STATE EXCEPT THAT
6 THE DISPOSITION OF THE PRODUCT SHALL NOT BE ORDERED BY THE COURT
7 WITHOUT FIRST PROVIDING THE CLAIMANT AN OPPORTUNITY TO PETITION
8 THE COURT FOR RELEASE OF THE PRODUCT OR FOR PERMISSION TO PROCESS
9 OR RELABEL THE PRODUCT TO BRING IT INTO COMPLIANCE WITH THIS
10 PART.

11 SEC. 8517. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SEC-
12 TION, IT IS THE EXPRESS LEGISLATIVE INTENT THAT THIS PART PREEMPT
13 ANY LOCAL ORDINANCE, REGULATION, OR RESOLUTION THAT PURPORTS TO
14 DUPLICATE, EXTEND, OR REVISE IN ANY MANNER THE PROVISIONS OF THIS
15 PART. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS SECTION, A LOCAL
16 UNIT OF GOVERNMENT SHALL NOT ENACT, MAINTAIN, OR ENFORCE AN ORDI-
17 NANCE, REGULATION, OR RESOLUTION THAT CONTRADICTS OR CONFLICTS IN
18 ANY MANNER WITH THIS PART.

19 (2) IF A LOCAL UNIT OF GOVERNMENT IS UNDER CONTRACT WITH THE
20 DEPARTMENT TO ACT AS ITS AGENT OR THE LOCAL UNIT OF GOVERNMENT
21 HAS RECEIVED PRIOR WRITTEN AUTHORIZATION FROM THE DEPARTMENT,
22 THAT LOCAL UNIT OF GOVERNMENT MAY ENACT AN ORDINANCE THAT IS
23 IDENTICAL TO THIS PART AND RULES PROMULGATED UNDER THIS PART,
24 EXCEPT AS PROHIBITED IN SUBSECTION (6). THE LOCAL UNIT OF
25 GOVERNMENT'S ENFORCEMENT RESPONSE FOR A VIOLATION OF THE ORDI-
26 NANCE THAT INVOLVES THE MANUFACTURING, STORAGE, DISTRIBUTION, OR

HB 5866, As Passed Senate, July 1, 1998

House Bill No. 5866

8

1 SALE OF PRODUCTS REGULATED BY THIS PART IS LIMITED TO ISSUING A
2 CEASE AND DESIST ORDER IN THE MANNER PRESCRIBED IN SECTION 8511.

3 (3) A LOCAL UNIT OF GOVERNMENT MAY ENACT AN ORDINANCE PRE-
4 SCRIBING STANDARDS DIFFERENT FROM THOSE CONTAINED IN THIS PART
5 AND RULES PROMULGATED UNDER THIS PART AND THAT REGULATES THE MAN-
6 UFACTURING, STORAGE, DISTRIBUTION, OR SALE OF A PRODUCT REGULATED
7 BY THIS PART UNDER EITHER OR BOTH OF THE FOLLOWING
8 CIRCUMSTANCES:

9 (A) UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT OR
10 PUBLIC HEALTH WILL EXIST WITHIN THE LOCAL UNIT OF GOVERNMENT.
11 THE DETERMINATION THAT UNREASONABLE ADVERSE EFFECTS ON THE ENVI-
12 RONMENT OR PUBLIC HEALTH WILL EXIST SHALL TAKE INTO CONSIDERATION
13 SPECIFIC POPULATIONS WHOSE HEALTH MAY BE ADVERSELY AFFECTED
14 WITHIN THAT LOCAL UNIT OF GOVERNMENT.

15 (B) THE LOCAL UNIT OF GOVERNMENT HAS DETERMINED THAT THE
16 MANUFACTURING, STORAGE, DISTRIBUTION, OR SALE OF A PRODUCT REGU-
17 LATED BY THIS PART WITHIN THAT UNIT OF GOVERNMENT HAS RESULTED OR
18 WILL RESULT IN THE VIOLATION OF OTHER EXISTING STATE OR FEDERAL
19 LAWS.

20 (4) AN ORDINANCE ENACTED PURSUANT TO SUBSECTIONS (2) AND (3)
21 SHALL NOT CONFLICT WITH EXISTING STATE LAWS OR FEDERAL LAWS. AN
22 ORDINANCE ENACTED PURSUANT TO SUBSECTION (3) SHALL NOT BE
23 ENFORCED BY A LOCAL UNIT OF GOVERNMENT UNTIL APPROVED BY THE COM-
24 MISSION OF AGRICULTURE. THE COMMISSION OF AGRICULTURE SHALL PRO-
25 VIDE A DETAILED EXPLANATION OF THE BASIS OF THE DENIAL WITHIN 60
26 DAYS.

HB 5866, As Passed Senate, July 1, 1998

HB 5866 as amended July 1, 1998

9

1 (5) UPON IDENTIFICATION OF UNREASONABLE ADVERSE EFFECTS ON
2 THE ENVIRONMENT OR PUBLIC HEALTH BY A LOCAL UNIT OF GOVERNMENT AS
3 EVIDENCED BY A RESOLUTION SUBMITTED TO THE DEPARTMENT, THE
4 DEPARTMENT SHALL HOLD A LOCAL PUBLIC MEETING WITHIN 60 DAYS AFTER
5 THE SUBMISSION OF THE RESOLUTION TO DETERMINE THE NATURE AND
6 EXTENT OF UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT OR
7 PUBLIC HEALTH DUE TO THE MANUFACTURING, STORAGE, DISTRIBUTION,
8 OR SALE OF A PRODUCT REGULATED BY THIS PART.
9 WITHIN 30 DAYS AFTER THE LOCAL PUBLIC MEETING, THE DEPARTMENT
10 SHALL ISSUE A DETAILED OPINION REGARDING THE EXISTENCE OF UNREA-
11 SONABLE ADVERSE EFFECTS ON THE ENVIRONMENT OR PUBLIC HEALTH AS
12 IDENTIFIED BY THE RESOLUTION OF THE LOCAL UNIT OF GOVERNMENT.

13 (6) THE DIRECTOR MAY CONTRACT WITH A LOCAL UNIT OF GOVERN-
14 MENT TO ACT AS ITS AGENT FOR THE PURPOSE OF ENFORCING THIS PART
15 AND THE RULES PROMULGATED UNDER THIS PART. THE DEPARTMENT SHALL
16 HAVE SOLE AUTHORITY TO ASSESS FEES, REGISTER FERTILIZER OR SOIL
17 CONDITIONER PRODUCTS, CANCEL OR SUSPEND REGISTRATIONS, AND REGU-
18 LATE AND ENFORCE ALL PROVISIONS OF SECTION 8512.

19 (7) FOR ANY ORDINANCE ENACTED PURSUANT TO THIS SECTION, THE
20 LOCAL UNIT OF GOVERNMENT SHALL PROVIDE THAT PERSONS ENFORCING THE
21 ORDINANCE COMPLY WITH THE TRAINING AND ENFORCEMENT REQUIREMENTS
22 AS DETERMINED APPROPRIATE BY THE DIRECTOR.