

# HOUSE BILL No. 5866

May 14, 1998, Introduced by Reps. Wetters, Harder, Frank, Rhead, Nye, Green, Voorhees, Horton, Middleton, Lowe, Alley, Gernaat, London, Vaughn, Llewellyn, DeVuyst, Jelinek, Gilmer, Brackenridge, Owen and Brewer and referred to the Committee on Agriculture.

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) "Aquifer" means a geologic formation, group of forma-  
3 tions, or part of a formation capable of yielding a significant  
4 amount of groundwater to wells or springs.

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

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

4 (d) "Brand or product name" means a term, design, or trade-  
5 mark used in connection with 1 or more grades of fertilizer.

6 (e) "Bulk fertilizer" means fertilizer distributed in a non-  
7 packaged form.

8 (f) "Custom mixed fertilizer" means a mixed fertilizer for-  
9 mulated according to individual specifications furnished by the  
10 consumer before mixing.

11 (g) "Department" means the department of agriculture.

12 (H) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OF AGRI-  
13 CULTURE OR HIS OR HER DESIGNEE.

14 (I) ~~-(h)-~~ "Distribute" means to import, consign, sell,  
15 barter, offer for sale, solicit orders for sale, or otherwise  
16 supply fertilizer for sale or use in this state.

17 (J) ~~-(i)-~~ "Fertilizer" means a substance containing 1 or  
18 more recognized plant nutrients, which substance is used for its  
19 plant nutrient content and which is designed for use, or claimed  
20 to have value, in promoting plant growth. Fertilizer does not  
21 include unmanipulated animal and vegetable manures, marl, lime,  
22 limestone, wood ashes, and other materials exempted by rules  
23 promulgated under this part.

24 (K) ~~-(j)-~~ "Fertilizer material" means any substance contain-  
25 ing any recognized plant nutrient, which is used as a fertilizer  
26 or for compounding mixed fertilizers.

1       (1) ~~(k)~~ "Grade" means the percentage guarantee of total  
2 nitrogen, available phosphorus, or available phosphoric acid,  
3 PWOT, and soluble potassium, or soluble potash, KWO, of a fertil-  
4 izer and shall be stated in the same order as listed in this  
5 subdivision. Indication of grade does not apply to peat or peat  
6 moss or soil conditioners.

7       (M) ~~(i)~~ "Groundwater" means underground water within the  
8 zone of saturation.

9       (N) ~~(m)~~ "Groundwater stewardship practices" means any of a  
10 set of voluntary practices adopted by the commission of agricul-  
11 ture pursuant to part 87, designed to protect groundwater from  
12 contamination by fertilizers.

13       (O) ~~(n)~~ "Guaranteed analysis" means the minimum percentage  
14 of each plant nutrient guaranteed or claimed to be present.

15       (P) ~~(o)~~ "Label" means any written, printed, or graphic  
16 matter on or attached to packaged fertilizer or used to identify  
17 fertilizer distributed in bulk or held in bulk storage.

18       (Q) ~~(p)~~ "Labeling" means all labels and other written,  
19 printed, or graphic matter upon or accompanying fertilizer at any  
20 time, and includes advertising or sales literature.

21       (R) ~~(q)~~ "Manufacture" means to process, granulate, com-  
22 pound, produce, mix, blend, or alter the composition of fertil-  
23 izer or fertilizer materials.

24       (S) ~~(r)~~ "Maximum contaminant level" means that term as it  
25 is defined in title XIV of the public health service act, chapter  
26 373, 88 Stat. 1660, and the regulations promulgated under that  
27 act.

1       (T) ~~(s)~~ "Mixed fertilizer" means a fertilizer containing  
2 any combination or mixture of fertilizer materials designed for  
3 use or claimed to have value in promoting plant growth, including  
4 mixtures of fertilizer and pesticide.

5       (U) ~~(t)~~ "Nitrogen fertilizer" means a fertilizer that con-  
6 tains nitrogen as a component.

7       (V) ~~(u)~~ "Official sample" means a sample of fertilizer  
8 taken by a representative of the department of agriculture in  
9 accordance with acceptable methods.

10       (W) "ORDER" MEANS A CEASE AND DESIST ORDER ISSUED UNDER SEC-  
11 TION 8511.

12       (X) ~~(v)~~ "Package" or "packaged" means any type of product  
13 regulated by this part that is distributed in individual contain-  
14 ers with a capacity not exceeding 55 gallons for liquids and not  
15 exceeding 200 pounds for solids.

16       (Y) ~~(w)~~ "Percent" and "percentage" mean the percentage by  
17 weight.

18       (Z) ~~(x)~~ "Soil conditioner" means a substance that is used  
19 or intended for use solely for the improvement of the physical  
20 nature of soil and for which no claims are made for plant nutri-  
21 ents content. Soil conditioner does not include guaranteed plant  
22 nutrients, hormones, bacterial inoculants, and products used in  
23 directly influencing or controlling plant growth.

24       (AA) ~~(y)~~ "Specialty fertilizer" means any fertilizer dis-  
25 tributed primarily for nonfarm use, such as use in connection  
26 with home, gardens, lawns, shrubbery, flowers, golf courses,

1 parks, and cemeteries, and may include fertilizers used for  
2 research or experimental purposes.

3 (BB) ~~-(z)-~~ "Ton" means a net ton of 2,000 pounds  
4 avoirdupois.

5 (CC) ~~-(aa)-~~ "Use" means the loading, mixing, applying, stor-  
6 ing, transporting, or disposing of a fertilizer.

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

21 (2) AN ORDER SHALL BE WRITTEN AND SHALL INFORM THE MANUFAC-  
22 TURER, STORAGE OPERATOR, DISTRIBUTOR, SELLER, OR REGISTRANT OF  
23 THE GROUNDS FOR ISSUANCE OF THE ORDER. THE PERSON RECEIVING THE  
24 ORDER SHALL IMMEDIATELY COMPLY WITH THE ORDER. FAILURE TO COMPLY  
25 SHALL SUBJECT THE PERSON TO THE PENALTY IMPOSED UNDER SECTION  
26 8517.

1       (3) THE DIRECTOR SHALL RESCIND THE ORDER IMMEDIATELY UPON  
2 BEING SATISFIED BY INSPECTION OF COMPLIANCE WITH THE ORDER. THE  
3 INSPECTION SHALL BE CONDUCTED AS SOON AS POSSIBLE AT THE VERBAL  
4 OR WRITTEN REQUEST OF THE RESPONSIBLE PARTY. THE RESCINDING  
5 ORDER OF THE DIRECTOR MAY BE VERBAL AND THE PERSON MAY RELY ON  
6 THE VERBAL RESCINDING ORDER. HOWEVER, A VERBAL ORDER SHALL BE  
7 FOLLOWED BY A WRITTEN RESCINDING ORDER.

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

20       (5) ANY PRODUCT OR PRODUCT LOT NOT IN COMPLIANCE WITH THIS  
21 PART IS SUBJECT TO SEIZURE UPON AN ACTION FILED BY THE DIRECTOR  
22 IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE  
23 PRODUCT IS LOCATED. IF THE COURT FINDS THE PRODUCT TO BE IN VIO-  
24 LATION OF THIS PART AND ORDERS THE CONDEMNATION OF THE PRODUCT,  
25 THE PRODUCT SHALL BE DISPOSED OF IN ANY MANNER CONSISTENT WITH  
26 THE QUALITY OF THE PRODUCT AND THE LAWS OF THIS STATE EXCEPT THAT  
27 THE DISPOSITION OF THE PRODUCT SHALL NOT BE ORDERED BY THE COURT

1 WITHOUT FIRST PROVIDING THE CLAIMANT AN OPPORTUNITY TO PETITION  
2 THE COURT FOR RELEASE OF THE PRODUCT OR FOR PERMISSION TO PROCESS  
3 OR RELABEL THE PRODUCT TO BRING IT INTO COMPLIANCE WITH THIS  
4 PART.

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

13 (2) IF A LOCAL UNIT OF GOVERNMENT IS UNDER CONTRACT WITH THE  
14 DEPARTMENT TO ACT AS ITS AGENT OR THE LOCAL UNIT OF GOVERNMENT  
15 HAS RECEIVED PRIOR WRITTEN AUTHORIZATION FROM THE DEPARTMENT,  
16 THAT LOCAL UNIT OF GOVERNMENT MAY ENACT AN ORDINANCE THAT IS  
17 IDENTICAL TO THIS PART AND RULES PROMULGATED UNDER THIS PART.  
18 THE LOCAL UNIT OF GOVERNMENT'S ENFORCEMENT RESPONSE FOR A VIOLA-  
19 TION OF THE ORDINANCE THAT INVOLVES THE MANUFACTURING, STORAGE,  
20 DISTRIBUTION, SALE, OR REGISTRATION OF PRODUCTS REGULATED BY THE  
21 ORDINANCE OR LICENSING OF A MANUFACTURING FACILITY IS LIMITED TO  
22 ISSUING A CEASE AND DESIST ORDER IN THE MANNER PRESCRIBED IN SEC-  
23 TION 8511.

24 (3) A LOCAL UNIT OF GOVERNMENT MAY ENACT AN ORDINANCE PRE-  
25 SCRIBING STANDARDS DIFFERENT FROM THOSE CONTAINED IN THIS PART  
26 AND RULES PROMULGATED UNDER THIS PART AND THAT REGULATES THE  
27 MANUFACTURING, STORAGE, DISTRIBUTION, SALE, OR REGISTRATION OF A

1 PRODUCT REGULATED BY THIS PART UNDER EITHER OR BOTH OF THE  
2 FOLLOWING CIRCUMSTANCES:

3 (A) UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT OR  
4 PUBLIC HEALTH WILL EXIST WITHIN THE LOCAL UNIT OF GOVERNMENT.  
5 THE DETERMINATION THAT UNREASONABLE ADVERSE EFFECTS ON THE ENVI-  
6 RONMENT OR PUBLIC HEALTH WILL EXIST SHALL TAKE INTO CONSIDERATION  
7 SPECIFIC POPULATIONS WHOSE HEALTH MAY BE ADVERSELY AFFECTED  
8 WITHIN THAT LOCAL UNIT OF GOVERNMENT.

9 (B) THE LOCAL UNIT OF GOVERNMENT HAS DETERMINED THAT THE  
10 MANUFACTURING, STORAGE, DISTRIBUTION, SALE, OR REGISTRATION OF A  
11 PRODUCT REGULATED BY THIS PART WITHIN THAT UNIT OF GOVERNMENT HAS  
12 RESULTED OR WILL RESULT IN THE VIOLATION OF OTHER EXISTING STATE  
13 OR FEDERAL LAWS.

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

21 (5) UPON IDENTIFICATION OF UNREASONABLE ADVERSE EFFECTS ON  
22 THE ENVIRONMENT OR PUBLIC HEALTH BY A LOCAL UNIT OF GOVERNMENT AS  
23 EVIDENCED BY A RESOLUTION SUBMITTED TO THE DEPARTMENT, THE  
24 DEPARTMENT SHALL HOLD A LOCAL PUBLIC MEETING WITHIN 60 DAYS AFTER  
25 THE SUBMISSION OF THE RESOLUTION TO DETERMINE THE NATURE AND  
26 EXTENT OF UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT OR  
27 PUBLIC HEALTH DUE TO THE USE OR STORAGE OF FERTILIZERS. WITHIN



1 30 DAYS AFTER THE LOCAL PUBLIC MEETING, THE DEPARTMENT SHALL  
2 ISSUE A DETAILED OPINION REGARDING THE EXISTENCE OF UNREASONABLE  
3 ADVERSE EFFECTS ON THE ENVIRONMENT OR PUBLIC HEALTH AS IDENTIFIED  
4 BY THE RESOLUTION OF THE LOCAL UNIT OF GOVERNMENT.

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

11 (7) FOR ANY ORDINANCE ENACTED PURSUANT TO THIS SECTION, THE  
12 LOCAL UNIT OF GOVERNMENT SHALL PROVIDE THAT PERSONS ENFORCING THE  
13 ORDINANCE COMPLY WITH THE TRAINING AND ENFORCEMENT REQUIREMENTS  
14 AS DETERMINED APPROPRIATE BY THE DIRECTOR. A LOCAL UNIT OF GOV-  
15 ERNMENT SHALL REIMBURSE THE DEPARTMENT FOR ACTUAL COSTS INCURRED  
16 IN TRAINING LOCAL GOVERNMENT PERSONNEL.