

Act No. 276
Public Acts of 1998
Approved by the Governor
July 26, 1998
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July 27, 1998
EFFECTIVE DATE: July 27, 1998

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 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

ENROLLED HOUSE BILL No. 5866

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," 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:

Sec. 8501. As used in this part:

(a) "Adulterated product" means a product which contains any deleterious or harmful substance in sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil or water when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use which may be necessary to protect plant life, animals, humans, aquatic life, soil or water are not shown on the label.

(b) "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.

(c) "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.

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

(e) “Brand or product name” means a term, design, or trademark used in connection with 1 or more grades of fertilizer.

(f) “Bulk fertilizer” means fertilizer distributed in a nonpackaged form.

(g) “Custom mixed fertilizer” means a mixed fertilizer formulated according to individual specifications furnished by the consumer before mixing.

(h) “Department” means the department of agriculture.

(i) “Director” means the director of the department of agriculture or his or her designee.

(j) “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.

(k) “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 part.

(l) “Fertilizer material” means any substance containing any recognized plant nutrient, which is used as a fertilizer or for compounding mixed fertilizers.

(m) “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.

(n) “Groundwater” means underground water within the zone of saturation.

(o) “Groundwater stewardship practices” means any of a set of voluntary practices adopted by the commission of agriculture pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(p) “Guaranteed analysis” means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(q) “Label” means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(r) “Labeling” means all labels and other written, printed, or graphic matter upon or accompanying fertilizer at any time, and includes advertising or sales literature.

(s) “Manufacture” means to process, granulate, compound, produce, mix, blend, or alter the composition of fertilizer or fertilizer materials.

(t) “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.

(u) “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.

(v) “Nitrogen fertilizer” means a fertilizer that contains nitrogen as a component.

(w) “Official sample” means a sample of fertilizer taken by a representative of the department of agriculture in accordance with acceptable methods.

(x) “Order” means a cease and desist order issued under section 8511.

(y) “Package” or “packaged” means any type of product regulated by this part that is distributed in individual containers with a capacity not exceeding 55 gallons for liquids and not exceeding 200 pounds for solids.

(z) “Percent” and “percentage” mean the percentage by weight.

(aa) “Soil conditioner” means a substance that 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.

(bb) “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.

(cc) “Ton” means a net ton of 2,000 pounds avoirdupois.

(dd) “Use” means the loading, mixing, applying, storing, transporting, or disposing of a fertilizer.

Sec. 8511. (1) The director, by a duly authorized agent, may select from any package or bulk lot of commercial fertilizer or soil conditioner exposed for sale in this state a sample to be used for the purposes of an official analysis for comparison with the label affixed to the package or bulk lot on sale. The director may at any time order a person to

cease and desist from manufacturing, storing, distributing, selling, or registering a product regulated by this part, or may seize or stop the sale of a fertilizer or soil conditioner that is misbranded or adulterated, fails to meet a label claim or guarantee, is being manufactured or distributed by an unlicensed person, or otherwise fails to comply with this part.

(2) An order shall be written and shall inform the manufacturer, storage operator, distributor, seller, or registrant of the grounds for issuance of the order. The person receiving the order shall immediately comply with the order. Failure to comply shall subject the person to the penalty imposed under this part.

(3) The director shall rescind the order immediately upon being satisfied by inspection of compliance with the order. The inspection shall be conducted as soon as possible at the verbal or written request of the responsible party. The rescinding order of the director may be verbal and the person may rely on the verbal rescinding order. However, a verbal order shall be followed by a written rescinding order.

(4) The director may issue and enforce a written order prohibiting the sale, use, or removal of a product regulated by this part to the owner or custodian of any product or product lot and requiring the product to be held by the owner or custodian at a designated place when the director finds that the product is being distributed in violation of this part. The order remains in effect until the director determines that the person is complying with the law or until the violation has been otherwise legally disposed of by written authority. The director shall release the product for sale, use, or removal upon compliance with this part and payment of all costs and expenses incurred in connection with the issuance and enforcement of the order.

(5) Any product or product lot not in compliance with this part is subject to seizure upon an action filed by the director in a court of competent jurisdiction in the county in which the product is located. If the court finds the product to be in violation of this part and orders the condemnation of the product, the product shall be disposed of in any manner consistent with the quality of the product and the laws of this state except that the disposition of the product shall not be ordered by the court without first providing the claimant an opportunity to petition the court for release of the product or for permission to process or relabel the product to bring it into compliance with this part.

Sec. 8517. (1) Except as otherwise provided in this section, it is the express legislative intent that this part preempt any local ordinance, regulation, or resolution that purports to duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, that local unit of government may enact an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (6). The local unit of government's enforcement response for a violation of the ordinance that involves the manufacturing, storage, distribution, or sale of products regulated by this part is limited to issuing a cease and desist order in the manner prescribed in section 8511.

(3) A local unit of government may enact an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and that regulates the manufacturing, storage, distribution, or sale of a product regulated by this part under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will exist within the local unit of government. The determination that unreasonable adverse effects on the environment or public health will exist shall take into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the manufacturing, storage, distribution, or sale of a product regulated by this part within that unit of government has resulted or will result in the violation of other existing state or federal laws.

(4) An ordinance enacted pursuant to subsections (2) and (3) shall not conflict with existing state laws or federal laws. An ordinance enacted pursuant to subsection (3) shall not be enforced by a local unit of government until approved by the commission of agriculture. The commission of agriculture shall provide a detailed explanation of the basis of the denial within 60 days.

(5) Upon identification of unreasonable adverse effects on the environment or public health by a local unit of government as evidenced by a resolution submitted to the department, the department shall hold a local public meeting within 60 days after the submission of the resolution to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacturing, storage, distribution, or sale of a product regulated by this part. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

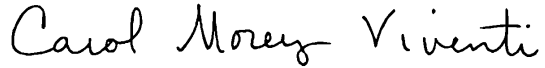
(6) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated under this part. The department shall have sole authority to assess fees, register fertilizer or soil conditioner products, cancel or suspend registrations, and regulate and enforce all provisions of section 8512.

(7) For any ordinance enacted pursuant to this section, the local unit of government shall provide that persons enforcing the ordinance comply with the training and enforcement requirements as determined appropriate by the director.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.