

SENATE BILL No. 1254

May 25, 2004, Introduced by Senator KUIPERS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 8501, 8502, 8503, 8505, 8506, 8507, 8509,
8510, 8513, and 8517 (MCL 324.8501, 324.8502, 324.8503, 324.8505,
324.8506, 324.8507, 324.8509, 324.8510, 324.8513, and 324.8517),
section 8501 as amended and section 8517 as added by 1998 PA 276
and sections 8502, 8503, 8505, 8506, 8507, 8509, 8510, and 8513
as added by 1995 PA 60, and by adding sections 8501a, 8518, 8519,
8520, and 8521; and to repeal acts and parts of acts.

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

1 for use on the label, or if adequate warning statements or
2 directions for use which may be necessary to protect plant life,
3 animals, humans, aquatic life, soil or water are not shown on the
4 label.

5 (b) "Aquifer" means a geologic formation, group of
6 formations, or part of a formation capable of yielding a
7 significant amount of groundwater to wells or springs.

8 (c) "Aquifer sensitivity" means a hydrogeologic function
9 representing the inherent abilities of materials surrounding the
10 aquifer to attenuate the movement of nitrogen fertilizers into
11 that aquifer.

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

15 (e) "Brand or product name" means a term, design, or
16 trademark used in connection with 1 or more grades of
17 fertilizer.

18 (f) "Bulk fertilizer" means fertilizer distributed in a
19 nonpackaged form.

20 (g) "Custom ~~mixed fertilizer~~ **blend**" means a ~~mixed~~
21 fertilizer ~~formulated~~ **blended** according to ~~individual~~
22 **customer** specifications. ~~furnished by the consumer before~~
23 ~~mixing.~~

24 (h) "Department" means the department of agriculture.

25 (i) "Director" means the director of the department of
26 agriculture or his or her designee.

27 (j) "Distribute" means to import, consign, sell, barter,

1 offer for sale, solicit orders for sale, or otherwise supply
2 fertilizer for sale or use in this state.

3 **(k) "Distributor" means any person who distributes fertilizer**
4 **for sale or use in this state.**

5 **(l) —(k)— "Fertilizer" means a substance containing 1 or more**
6 **recognized plant nutrients, which substance is used for its plant**
7 **nutrient content and which is designed for use, or claimed to**
8 **have value, in promoting plant growth. Fertilizer does not**
9 **include unmanipulated animal and vegetable manures, marl, lime,**
10 **limestone, wood ashes, and other materials exempted by rules**
11 **promulgated under this part.**

12 **(m) —(l)— "Fertilizer material" means —any substance**
13 **containing any recognized plant nutrient, which is used as a**
14 **fertilizer —or for compounding mixed fertilizers.— that is any of**
15 **the following:**

16 **(i) Contains not more than 1 of the following as primary**
17 **nutrients:**

18 **(A) Total nitrogen (N).**

19 **(B) Available phosphate (P W O T).**

20 **(c) Soluble potash (K W O).**

21 **(ii) Has 85% or more of its plant nutrient content present in**
22 **the form of a single chemical compound.**

23 **(iii) Is derived from a plant or animal residue or by-product**
24 **or natural material deposit which has been processed in such a**
25 **way that its content of plant nutrients has not been materially**
26 **changed except purification and concentration.**

27 **(n) —(m)— "Grade" means the percentage guarantee of total**

1 nitrogen (N), ~~available phosphorus, or available phosphoric~~
2 ~~acid, P W O T~~ **phosphate (P W O T)**, and ~~soluble potassium, or soluble~~
3 ~~potash, K W O~~ **soluble potash (K W O)**, of a fertilizer and shall be
4 stated in the same order ~~as listed~~ **given** in this subdivision.
5 Indication of grade does not apply to peat or peat moss or soil
6 conditioners.

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

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

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

15 (r) ~~(q)~~ "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 (s) ~~(r)~~ "Labeling" means all labels and other written,
19 printed, **electronic**, or graphic matter upon or accompanying **any**
20 fertilizer at any time, and includes advertising, ~~or~~ sales
21 literature, **brochures, posters, and internet, television, and**
22 **radio announcements used in promoting the sale of that**
23 **fertilizer.**

24 (t) "Licensee" means the person who receives a license to
25 manufacture or distribute fertilizers under this part.

26 (u) "Lot" means an identifiable quantity of fertilizer that
27 can be sampled officially according to standards adopted by the

1 department under section 8510, that amount contained in a single
2 vehicle, or that amount delivered under a single invoice.

3 (v) ~~—(s)—~~ "Manufacture" means to process, granulate,
4 compound, produce, mix, blend, or alter the composition of
5 fertilizer or fertilizer materials.

6 (w) ~~—(t)—~~ "Maximum contaminant level" means that term as it
7 is defined in title XIV of the public health service act, chapter
8 373, 88 Stat. 1660, and the regulations promulgated under that
9 act.

10 (x) ~~—(u)—~~ "Mixed fertilizer" means a fertilizer containing
11 any combination or mixture of fertilizer materials. ~~—designed for~~
12 ~~use or claimed to have value in promoting plant growth, including~~
13 ~~mixtures of fertilizer and pesticide.~~

14 (y) ~~—(v)—~~ "Nitrogen fertilizer" means a fertilizer that
15 contains nitrogen as a component.

16 (z) ~~—(w)—~~ "Official sample" means a sample of fertilizer
17 taken by a representative of the department of agriculture in
18 accordance with acceptable **sampling** methods **as determined by the**
19 **department under section 8510.**

20 (aa) ~~—(x)—~~ "Order" means a cease and desist order issued
21 under section 8511.

22 (bb) ~~—(y)—~~ "Package" or "packaged" means any type of product
23 regulated by this part that is distributed in individual **labeled**
24 containers. ~~—with a capacity not exceeding 55 gallons for liquids~~
25 ~~and not exceeding 200 pounds for solids.~~

26 (cc) ~~—(z)—~~ "Percent" and "percentage" mean the percentage by
27 weight.

1 (dd) "Person" means an individual, partnership, association,
2 firm, limited liability company, and corporation.

3 (ee) "Primary nutrients" means total nitrogen, available
4 phosphate, or soluble potash, or any combination of those
5 nutrients.

6 (ff) "Registrant" means the person who registers a product
7 under this part.

8 (gg) ~~—(aa)—~~ "Soil conditioner" means ~~a substance that is~~
9 ~~used or intended for use solely for the improvement of the~~
10 ~~physical nature of soil and for which no claims are made for~~
11 ~~plant nutrients content. Soil conditioner does not include~~
12 ~~guaranteed plant nutrients, hormones, bacterial inoculants, and~~
13 ~~products used in directly influencing or controlling plant~~
14 ~~growth.~~ any substance, except agricultural liming materials,
15 pesticides, or unmanipulated animal or vegetable manures, which
16 are intended to improve the physical characteristics of soil and
17 for which no claims are made for plant nutrient content. Soil
18 conditioners include, but are not limited to, materials such as
19 horticultural growing media, composted products, peat moss and
20 peat products, synthetic soil conditioners, or other products
21 that are worked into the soil or are applied on the surface to
22 improve the properties of the soil for enhancing plant growth.
23 Soil conditioners do not include guaranteed plant nutrients,
24 hormones, bacterial inoculants, and products used in directly
25 influencing or controlling plant growth. Soil conditioners for
26 which claims are made of nutrient value are considered fertilizer
27 products for the purposes of this part.

1 **(hh)** ~~—(bb)—~~ "Specialty fertilizer" means any fertilizer
 2 distributed primarily for nonfarm use, such as use in connection
 3 with home, gardens, lawns, shrubbery, flowers, golf courses,
 4 parks, and cemeteries, and may include fertilizers used for
 5 research or experimental purposes.

6 **(ii)** ~~—(ee)—~~ "Ton" means a net ~~—ten—~~ **weight** of 2,000 pounds
 7 avoirdupois.

8 **(jj)** ~~—(dd)—~~ "Use" means the loading, mixing, applying,
 9 storing, transporting, or disposing of a fertilizer.

10 **Sec. 8501a. As used in this part:**

11 **(a)** "General turf" means noncrop land managed using
 12 turfgrasses including, but not limited to, home lawns,
 13 cemeteries, park areas, and commercial, school, university, and
 14 government grounds. General turf does not include performance
 15 turf, forage production, sod farms, turf establishment, or other
 16 agricultural production.

17 **(b)** "Local unit of government" means a county, city,
 18 township, or village. Local unit of government does not include
 19 the state or federal government or a state or federal agency.

20 **(c)** "Management practices" means structural, vegetative, or
 21 other managerial practices that reduce or prevent the detachment,
 22 transport, and delivery of pollutants to surface waters or
 23 groundwater.

24 **(d)** "Performance turf" means turf managed for use on golf
 25 courses and athletic fields.

26 **(e)** "Turf establishment" means an area where turfgrasses are
 27 being established from seed or sod and is limited to the first

1 year of growth.

2 (f) "Waters of the state" means all of the following:

3 (i) The Great Lakes and their connecting waters.

4 (ii) All inland lakes.

5 (iii) Rivers.

6 (iv) Streams.

7 (v) Other surface bodies of water within the confines of the
8 state.

9 Sec. 8502. (1) A packaged fertilizer distributed in this
10 state, including packaged ~~custom~~ mixed fertilizer and soil
11 conditioner, shall have placed on or affixed to the package or
12 container a label setting forth in clearly legible and
13 conspicuous form ~~all of~~ the following:

14 (a) The net weight of the contents of the package, except
15 that peat or peat moss shall be designated by volume.

16 (b) Brand or product name.

17 (c) Name and address of the licensed manufacturer or
18 distributor.

19 (d) Grade, **provided the grade is not required when no primary**
20 **nutrients are claimed.** This subdivision does not apply to peat
21 or peat moss or material sold as a soil conditioner.

22 (e) Guaranteed analysis. This subdivision does not apply to
23 peat or peat moss or material sold as a soil conditioner.

24 (2) A fertilizer distributed in this state in bulk, **except a**
25 **custom blend,** shall be accompanied by a written or printed
26 invoice or statement to be furnished to the purchaser at the time
27 of delivery containing in clearly legible and conspicuous form

1 ~~all of~~ the following information:

2 (a) Name and address of the licensed manufacturer or
3 distributor.

4 (b) Name and address of purchaser.

5 (c) Date of sale.

6 (d) Brand or product name.

7 (e) Grade, **provided the grade is not required when no primary**
8 **nutrients are claimed.**

9 (f) Guaranteed analysis.

10 (g) Net weight.

11 (3) A custom blend shall be accompanied by a written or
12 printed invoice or statement to be furnished to the purchaser at
13 the time of delivery containing in clearly legible and
14 conspicuous form the following information:

15 (a) Name and address of the licensed manufacturer or
16 distributor.

17 (b) Name and address of purchaser.

18 (c) Date of sale.

19 (d) **Either the net weight and guaranteed analysis of the**
20 **custom blend or the guaranteed analysis and net weight of each**
21 **material used in the formulation of the custom blend or both.**

22 (4) ~~(3)~~ Fertilizer in bulk storage shall be identified with
23 a label attached to the storage bin or container giving the name
24 and address of the licensed manufacturer or distributor and the
25 name and grade of the product.

26 Sec. 8503. (1) The guaranteed analysis ~~for the primary~~
27 ~~nutrients of nitrogen, available phosphoric acid, P W O T, and~~

1 ~~soluble potash, K W O, shall be expressed as whole numbers on the~~
 2 ~~label~~ shall show the minimum percentage of plant nutrients
 3 claimed in the following order and form:

4 (a) Total nitrogen ~~, N~~ (N) . _____ %

5 Available ~~phosphoric acid, P W O T~~

6 phosphate (P W O _____ %

7 Soluble potash ~~, K W O~~ (K W _____ %

8 ~~(2) A mixed fertilizer may not be sold if the sum of the~~
 9 ~~guarantees for the nitrogen, available phosphoric acid, and~~
 10 ~~soluble potash totals less than 20%, except specialty fertilizers~~
 11 ~~permitted to be sold by product registration issued by the~~
 12 ~~department.~~

13 ~~—— (3) If elemental guarantees are required by rules, as~~
 14 ~~authorized by section 8516, the guaranteed analysis shall be~~
 15 ~~expressed in terms of percentage of available phosphorus, P, and~~
 16 ~~soluble potassium, K.~~

17 (b) When applied to mixed fertilizers, grade shall be given
 18 in whole numbers only. However, specialty fertilizers with a
 19 guarantee of less than 1% of total nitrogen, available phosphate,
 20 and soluble potash may use fractional units. Fertilizer
 21 materials, bone meal, manures, and similar materials may be
 22 guaranteed in fractional units.

23 (c) When applied to custom blends, grade can either be given
 24 in whole numbers or in numbers expressed to the nearest 1/10 of a
 25 percent in the form of a decimal in the analysis.

26 (d) For unacidulated mineral phosphatic material and basic
 27 slag, bone, tankage, and other organic phosphatic materials, the

1 total phosphate or degree of fineness, or both, may also be
2 guaranteed.

3 (2) ~~—(4)—~~ Additional plant nutrients, other than nitrogen,
4 phosphorus, and potassium, claimed to be present in any form or
5 manner shall be guaranteed on the elemental basis, at levels not
6 less than those established by rules. ~~The materials shall be~~
7 ~~approved by the director of the department, by and with the~~
8 ~~advice of the director of the Michigan agricultural experiment~~
9 ~~station.~~ Other beneficial compounds or substances, determinable
10 by laboratory methods, may be guaranteed if approved by the
11 director.

12 Sec. 8505. (1) A person shall not distribute a specialty
13 fertilizer or soil conditioner until it is registered ~~by the~~
14 ~~manufacturer or distributor~~ with the department. ~~and the~~
15 ~~appropriate groundwater protection fees provided for in~~
16 ~~section 8715 have been submitted.~~ An application in duplicate
17 listing each brand and product name of each grade of specialty
18 fertilizer or soil conditioner shall be made on a form furnished
19 by the director and shall be accompanied with ~~a~~ **the appropriate**
20 ~~fee of \$25.00~~ for each brand and product name of each grade.
21 Labels for each brand and product name of each grade shall
22 accompany the application. Upon approval of an application by
23 the director, a copy of the registration **approval** shall be
24 furnished to the applicant. All registrations expire on
25 December 31 of each year.

26 (2) A person applying for a registration under subsection (1)
27 shall pay the following annual fees for each brand and product

1 name of each grade:

2 (a) Registration fee of \$25.00.

3 (b) Appropriate groundwater and freshwater protection fees
4 provided for in section 8715.

5 (3) A distributor is not required to register a brand of
6 fertilizer that is registered under this part by another person,
7 if the label does not differ in any respect.

8 (4) A manufacturer or distributor of custom blend specialty
9 fertilizers for home lawns, golf courses, recreational areas, or
10 other nonfarm areas shall not be required to register each grade
11 distributed but shall license their firm on an application
12 furnished by the director for an annual fee of \$100.00 and label
13 the fertilizer as provided in section 8502. The label of each
14 fertilizer distributed under this subsection shall be maintained
15 by the manufacturer or distributor for 1 year for inspection by
16 the director.

17 Sec. 8506. (1) An inspection fee of 10 cents per ton shall
18 be paid to the department for all fertilizers or soil
19 conditioners sold or distributed in this state. For peat or peat
20 moss, the inspection fee shall be 2 cents per cubic yard. This
21 fee shall not apply to registered specialty fertilizers or soil
22 conditioners sold or distributed only in packages of 10 pounds or
23 less.

24 (2) Payment of the inspection fee shall be made on the basis
25 of tonnage reports setting forth the number of tons of each grade
26 of fertilizer and soil conditioner and the number of cubic yards
27 of peat or peat moss sold or distributed in this state. The

1 reports shall cover the periods of the year and be made in a
 2 manner specified by the director of the department in rules, and
 3 shall be filed with the department not later than 30 days after
 4 the close of each period. The time may be extended for cause for
 5 an additional 15 days only on written request to, and approval
 6 by, the department. Remittance to cover the inspection fee shall
 7 accompany each tonnage report. Payments due of less than \$1.00
 8 **are waived, —or— and** refunds ~~resulting from overpayment~~ of less
 9 than \$1.00 ~~—are waived—~~ **will not be processed, unless requested**
 10 **in writing.** ~~A penalty of 10% of the amount due, with a minimum~~
 11 ~~of \$10.00, shall be assessed against the licensee for all amounts~~
 12 ~~not paid when due.~~ **For any report not filed with the department**
 13 **by the due date, a penalty of \$50.00 or 10% of the amount due,**
 14 **whichever is greater, shall be assessed.** Unpaid fees and
 15 penalties constitute a debt and become the basis of a judgment
 16 against the licensee. Records upon which the statement of
 17 tonnage is based are subject to department audit.

18 (3) When more than 1 person is involved in the distribution
 19 of fertilizer or soil conditioners, the last person who is
 20 licensed or has the fertilizer or soil conditioner registered and
 21 who distributes to a nonlicensee **or nonregistrant** is responsible
 22 for reporting the tonnage and paying the inspection fee.

23 Sec. 8507. (1) Each licensee **and registrant** shall maintain
 24 for a period of 3 years a record of quantities and grades of
 25 fertilizer and soil conditioner sold or distributed by the
 26 licensee **or registrant** and shall make the records available for
 27 inspection and audit on request of the department **made during**

1 **normal business hours.** Each ~~vendor of fertilizer and soil~~
2 ~~conditioner~~ **distributor** shall maintain for a period of 3 years
3 shipping data such as invoices and freight bills pertaining to
4 fertilizer and soil conditioner that establish date and origin of
5 the shipment, and shall make the records available for inspection
6 and audit on request of the department.

7 (2) Tonnage payments, tonnage reports, or other information
8 furnished or obtained under this part shall not be disclosed in a
9 way that will divulge the business operations of any ~~one~~ 1
10 person.

11 Sec. 8509. A person shall not do any of the following:

12 (a) Sell or distribute fertilizer or soil conditioner in
13 violation of the requirements of this part or the rules
14 promulgated under this part.

15 (b) Make a guarantee, claim, or representation in connection
16 with the sale of fertilizer or soil conditioner, or in ~~their~~
17 **its** labeling, which is false, deceptive, or misleading.

18 (c) Manufacture or distribute a fertilizer or soil
19 conditioner without a license as required by this part or
20 distribute a specialty fertilizer or soil conditioner unless
21 registered as required by this part.

22 (d) Make a false or misleading statement in an application
23 for a license or in an inspection fee or statistical report or in
24 any other statement or report filed with the department pursuant
25 to this part.

26 (e) Attach or cause to be attached an analysis stating that a
27 fertilizer contains a higher percentage of a plant nutrient than

1 it in fact contains.

2 **(f) Distribute an adulterated product.**

3 Sec. 8510. (1) The ~~department~~ **director** shall inspect,
4 sample, and analyze fertilizers and soil conditioners distributed
5 within this state at a time and place and to the extent necessary
6 to determine compliance with this part.

7 **(2) The methods of sampling and analysis are those as**
8 **established by the association of American plant food control**
9 **officials or the association of analytical communities,**
10 **international, as those standards exist on the effective date of**
11 **the amendatory act that added this subsection, and are**
12 **incorporated by reference. The department may promulgate rules**
13 **to update these standards. In cases not covered by such methods,**
14 **or in cases where methods are available in which improved**
15 **applicability has been demonstrated, the director may adopt, by**
16 **rule, such other methods as are considered appropriate.**

17 **(3) —(2)—** Department representatives and inspectors shall
18 have free access during regular business hours **and extended**
19 **operating hours** to all premises where fertilizers or soil
20 conditioners are manufactured, sold, or stored, and to all trucks
21 or other vehicles and vessels used in the transportation of a
22 fertilizer or soil conditioner in this state, to determine
23 compliance with this part. Department representatives and
24 inspectors may stop any conveyance transporting fertilizer or
25 soil conditioner for the purpose of inspecting and sampling the
26 products and examining their labeling.

27 **(4) —(3)—** A manufacturer or distributor of fertilizer or soil

1 conditioner shall submit to the department, upon request, product
2 samples, copies of labeling, or any other data or information
3 that the department may request concerning composition and claims
4 and representations made for fertilizers and soil conditioners
5 manufactured or distributed by the manufacturer or distributor
6 within this state.

7 (5) ~~—(4)—~~ The director may, upon reasonable notice, require a
8 person to furnish any information relating to the identification,
9 nature, and quantity of fertilizers that are or have been used on
10 a particular site and to current or past practices that may have
11 affected groundwater quality. Information required under this
12 subsection is confidential business information and is not
13 subject to the freedom of information act, ~~Act No. 442 of the~~
14 ~~Public Acts of 1976, being sections 15.231 to 15.246 of the~~
15 ~~Michigan Compiled Laws— 1976 PA 442, MCL 15.231 to 15.246.~~

16 Sec. 8513. The department may promulgate rules regarding the
17 bulk storage of fertilizers, **anhydrous ammonia storage, transfer**
18 **and application equipment, and application management practices**
19 **for general turf.**

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

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

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

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

24 (b) The local unit of government has determined that the
25 manufacturing, storage, distribution, **use**, or sale of a product
26 regulated by this part within that unit of government has
27 resulted or will result in the violation of other existing state

1 or federal laws.

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

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

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

27 (7) For any ordinance enacted pursuant to this section, the

1 local unit of government shall provide that persons enforcing the
2 ordinance comply with the training and enforcement requirements
3 as determined appropriate by the director.

4 Sec. 8518. A person aggrieved by an order issued pursuant
5 to this part may request a hearing pursuant to the administrative
6 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

7 Sec. 8519. (1) The director, upon finding after notice and
8 an opportunity for an administrative hearing that a person has
9 violated any provision of this part or a rule promulgated under
10 this part, may impose an administrative fine of not more than
11 \$1,000.00 for each violation.

12 (2) If the director finds that a violation has occurred
13 despite the exercise of due care or did not result in significant
14 harm to human health or the environment, the director may issue a
15 warning instead of imposing an administrative fine.

16 (3) The director shall advise the attorney general of the
17 failure of any person to pay an administrative fine imposed under
18 this section. The attorney general shall bring an action in a
19 court of competent jurisdiction to recover the fine.

20 (4) A person who knowingly violates this part or a rule
21 promulgated under this part is guilty of a misdemeanor punishable
22 by a fine of not more than \$5,000.00 for each offense, in
23 addition to any administrative fines imposed.

24 (5) A person who knowingly and with malicious intent violates
25 this part or a rule promulgated under this part is guilty of a
26 misdemeanor punishable by a fine of not more than \$25,000.00 for
27 each offense.

1 (6) The director may bring an action to enjoin the violation
2 or threatened violation of this part or a rule promulgated under
3 this part in a court of competent jurisdiction of the county in
4 which the violation occurs or is about to occur.

5 (7) The attorney general may file a civil action in which the
6 court may impose on any person who violates this part or a rule
7 promulgated under this part a civil fine of not more than
8 \$5,000.00 for each violation.

9 (8) In defense of an action filed under this section, in
10 addition to any other lawful defense, a person may present
11 evidence as an affirmative defense that, at the time of the
12 alleged violation, he or she was in compliance with this part and
13 rules promulgated under this part.

14 (9) A person who violates this part is liable for all damages
15 sustained by a purchaser of a product sold in violation of this
16 part. In an enforcement action, a court, in addition to other
17 remedies or penalties provided by law, may order restitution to a
18 party injured by the purchase of a product sold in violation of
19 this part.

20 Sec. 8520. The penalties provided for violations of this
21 part do not apply to any of the following:

22 (a) A commercial carrier while lawfully engaged in
23 transporting a commercial fertilizer within this state, if the
24 carrier, upon request, permits the director to copy all records
25 showing the transactions in and movement of the commercial
26 fertilizer.

27 (b) The shipment or movement of any commercial fertilizer

1 considered to be in violation of this part for the specific
2 purposes of disposal or storage when conducted under the approval
3 of the director.

4 (c) Public officials of this state and the federal
5 government while engaged in the performance of their official
6 duties in administering this part or rules promulgated under this
7 part.

8 Sec. 8521. A court shall not allow the recovery of damages
9 by a person against whom an administrative action was brought
10 resulting in an order stopping the sale or use of fertilizer or
11 fertilizer material or requiring its seizure if the court finds
12 that there was probable cause for the action or order.

13 Enacting section 1. Section 8514 of the natural resources
14 and environmental protection act, 1994 PA 451, MCL 324.8514, is
15 repealed.