NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 85
FERTILIZERS

324.8501 Definitions; A to T.

Sec. 8501. As used in this part:

(a) "Adulterated product" means a product that 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 that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown on the label.

(b) "Agricultural use" means that term as defined in section 36101.

(c) "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.

(d) "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.

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

(f) "Biosolids" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment, or other means.

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

(h) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(i) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or blended as specifically requested by the consumer prior to blending.

(j) "Department" means the department of agriculture and rural development.

(k) "Director" means the director of the department or his or her designee.

(*l*) "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.

(m) "Distributor" means any person who distributes fertilizer for sale or use in this state.

(n) "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.

(o) "Fertilizer material" means a fertilizer to which 1 or more of the following apply:

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

(A) Total nitrogen (N).

(B) Available phosphate (P_2O_5).

(C) Soluble potash (K_2O).

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

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

(p) "Fund" means the fertilizer control fund created under section 8514.

(q) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O), of a fertilizer. Grade shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(r) "Groundwater" means underground water within the zone of saturation.

(s) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture and rural development pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

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

(u) "Impervious surface" means a paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.

(v) "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

identify fertilizer distributed in bulk or held in bulk storage.

(w) "Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.

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

(y) "Lot" means an identifiable quantity of fertilizer that can be sampled officially according to methods adopted under section 8510, that is contained in a single vehicle, or that is delivered under a single invoice.

(z) "Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil or plant additive.

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

(bb) "Natural fertilizer" means a substance composed only of natural organic, natural inorganic, or both types of fertilizer materials and natural fillers.

(cc) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.

(dd) "Turf" means land, including residential, commercial, or industrial property, golf courses, or publicly owned land, that is planted in closely mowed, managed grass, except land used in the operation of a commercial farm.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2008, Act 13, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

Popular name: Act 451

Popular name: NREPA

324.8501a Definitions; M to U.

Sec. 8501a. As used in this part:

(a) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(b) "Nitrogen fertilizer" means a fertilizer that contains nitrogen as a component.

(c) "Official sample" means a sample of fertilizer taken by a representative of the department of agriculture in accordance with acceptable sampling methods under section 8510.

(d) "Order" means a cease and desist order issued under section 8511.

(e) "Package" or "packaged" means any type of product regulated by this part that is distributed in individual labeled containers.

(f) "Percent" and "percentage" mean the percentage by weight.

(g) "Person" means an individual, partnership, association, firm, limited liability company, or corporation.

(h) "Primary nutrients" means total nitrogen, available phosphate, or soluble potash, or any combination of those nutrients.

(i) "Registrant" means the person who registers a product under this part.

(j) "Soil conditioner" means any substance that is used or intended for use to improve the physical characteristics of soil, including, but not limited to, materials such as peat moss and peat products, composted products, synthetic soil conditioners, or other products that are worked into the soil or are applied on the surface to improve the properties of the soil for enhancing plant growth. Soil conditioner does not include guaranteed plant nutrients, agricultural liming materials, pesticides, unmanipulated animal or vegetable manures, hormones, bacterial inoculants, and products used in directly influencing or controlling plant growth. A soil conditioner for which claims are made of nutrient value is considered a fertilizer for the purposes of this part.

(k) "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.

(*l*) "Ton" means a net weight of 2,000 pounds avoirdupois.

(m) "Use" means the loading, mixing, applying, storing, transporting, or disposing of a fertilizer.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8502 Label; invoice.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

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

(a) The net weight of the contents of the package, except that soil conditioners, peat, or peat moss may be designated by volume.

(b) Brand or product name.

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

(d) Grade. However, the grade is not required when no primary nutrients are claimed. This subdivision does not apply to peat or peat moss, material sold as a soil conditioner, or fertilizer for which no primary nutrients are claimed.

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

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

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

(b) Name and address of purchaser.

(c) Date of sale.

(d) Brand or product name.

(e) Grade. However, the grade is not required when no primary nutrients are claimed.

(f) Guaranteed analysis.

(g) Net weight.

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

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

(b) Name and address of purchaser.

(c) Date of sale.

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

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8503 Order and form of guaranteed analysis; minimum percentage of plant nutrients; additional plant nutrients; other beneficial compounds or substances.

Sec. 8503. (1) The guaranteed analysis shall show the minimum percentage of plant nutrients claimed in the following order and form:

(a) Total nitrogen (N). _____%

Available phosphate (P_2O_5). _____%

Soluble potash (K_2O). _____%

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

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

(d) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed.

(2) Additional plant nutrients, other than nitrogen, phosphorus, and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis, at levels not less than those established by rules. Other beneficial compounds or substances, determinable by laboratory methods, may be guaranteed if approved by the director.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Popular name: NREPA

324.8504 License to manufacture or distribute fertilizer; fee; application; beneficial use by-product intended for beneficial use 3; notice of additional distribution points; exceptions; expiration; operation of business located outside of state.

Sec. 8504. (1) A person shall not manufacture or distribute fertilizer in this state, except specialty fertilizer and soil conditioners, until the appropriate water quality protection fee provided in section 8715 has been submitted, and except as authorized by a license to manufacture or distribute issued by the department pursuant to part 13. An application for a license shall be accompanied by a fee of $100.00 for each of the following:

(a) Each fixed location at which fertilizer is manufactured in this state.

(b) Each mobile unit used to manufacture fertilizer in this state.

(c) Each location out of this state that applies labeling showing an out-of-state origin of fertilizer distributed in this state to nonlicensees.

(2) An application for a license to manufacture or distribute fertilizer shall include all of the following:

(a) The name and address of the applicant.

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

(3) If the fertilizer is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

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

(5) A distributor is not required to obtain a license if the distributor is selling fertilizer of a distributor or a manufacturer licensed under this part.

(6) All licenses to manufacture or distribute fertilizer expire on December 31 of each year.

(7) A person licensed under this section that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The person licensed under this section shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred in auditing the records if they are held at an out-of-state location.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8505 Distribution of specialty fertilizer or soil conditioner; registration; application; labels to accompany application; beneficial use by-product intended for beneficial use 3; copy of registration approval; expiration; fees; labeling blended soil conditioners; operation of business located outside of state.

Sec. 8505. (1) A person shall not distribute a specialty fertilizer or soil conditioner unless it is registered with the department. An application for registration 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. An application shall be accompanied with the fees described in subsection (4) for each brand and product name of each grade. Labels for each brand and product name of each grade shall accompany the application.

(2) If the specialty fertilizer or soil conditioner is a beneficial use by-product intended for beneficial use 3 under part 115, the application shall also include the information identified in section 11551(7).

(3) Upon approval of an application by the director, a copy of the registration approval shall be furnished to the applicant. All registrations expire on December 31 of each year.

(4) A person applying for a registration under subsection (1) shall pay the following annual fees for each brand and product name of each grade:

(a) Registration fee of $25.00.

(b) Appropriate water quality protection fee provided for in section 8715.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

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

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

(7) A manufacturer or distributor of soil conditioners blended according to specifications provided to a blender or blended as specifically requested by the consumer prior to blending shall either register each brand or blend distributed or license its firm on an application furnished by the director for an annual fee of $100.00 and shall label the soil conditioner as provided in section 8502. The label of each soil conditioner distributed under this subsection shall be maintained by the manufacturer or distributor for 1 year for inspection by the director.

(8) A registrant that operates from a business location outside this state shall do either of the following:

(a) Continuously maintain in this state a registered office and a resident agent, which agent may be an individual resident in this state whose business office or residence is identical with the registered office, a domestic corporation or limited liability company, or a foreign corporation or limited liability company authorized to transact business in this state and having a business office identical with the registered office. The registrant shall file with the department the name, address, and telephone number of the resident agent and shall maintain and make available records required by this part and part 87.

(b) Maintain and make available to the department records required by this part and part 87 and pay all costs incurred by the department in auditing the records if they are held at an out-of-state location.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2014, Act 178, Eff. Sept. 16, 2014;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8506 Inspection fee; tonnage reports as basis of payment; waiver; penalty; unpaid fees and penalties as basis of judgment; responsibility for reporting tonnage and paying inspection fee; deposit of money collected.

Sec. 8506. (1) An inspection fee of 35 cents per ton shall be paid to the department for all fertilizers or soil conditioners sold or distributed in this state. For peat or peat moss, the inspection fee shall be 2 cents per cubic yard. This fee does not apply to registered specialty fertilizers or soil conditioners sold or distributed only in packages of 10 pounds or less.

(2) Payment of the inspection fee shall be made on the basis of tonnage reports setting forth the number of tons of each grade of fertilizer and soil conditioner and the number of cubic yards of peat or peat moss sold or distributed in this state. The reports shall cover the periods of the year and be made in a manner specified by the director in rules, and shall be filed with the department not later than 30 days after the close of each period. The time may be extended for cause for an additional 15 days only on written request to, and approval by, the department. Remittance to cover the inspection fee shall accompany each tonnage report. Payments due of less than $5.00 are waived, and refunds of less than $5.00 will not be processed, unless requested in writing. For any report not filed with the department by the due date, a penalty of $50.00 or 10% of the amount due, whichever is greater, shall be assessed. Unpaid fees and penalties constitute a debt and become the basis of a judgment against the licensee. Records upon which the statement of tonnage is based, including those described in this section and section 8715, are subject to department audit.

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

(4) Money collected by the department under this section shall be forwarded to the state treasurer for deposit into the fund.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8506a Audits.

Sec. 8506a. The director may conduct audits to determine compliance with this part. In conducting audits under this part, the director may contract for the performance of the audit.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

History: Add. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Compiler's note: NREPA

324.8507 Records; disclosure of information.

Sec. 8507. (1) Each licensee and registrant shall maintain for a period of 3 years a record of quantities and grades of fertilizer and soil conditioner sold or distributed by the licensee or registrant and shall make the records available for inspection and audit during normal business hours on request of the department. Each distributor shall maintain for a period of 3 years shipping data such as invoices and freight bills pertaining to fertilizer and soil conditioner that establish date and origin of the shipment, and shall make the records available for inspection and audit on request of the department.

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

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8508 Construction and application of part.

Sec. 8508. (1) This part does not require the payment of inspection fees for sales or exchanges of fertilizers or soil conditioners between manufacturers who mix fertilizer or soil conditioner materials for sale, or prevent the free and unrestricted shipment of fertilizers or soil conditioners for further processing to manufacturers licensed under this part.

(2) This part does not apply to a carrier in respect to a fertilizer or soil conditioner delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8509 Prohibitions.

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

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

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

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

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

(e) Attach or cause to be attached an analysis stating that a fertilizer contains a higher percentage of a plant nutrient than it in fact contains.

(f) Distribute an adulterated product.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8510 Inspecting, sampling, and analyzing fertilizer and soil conditioners; methods; rules; access to premises; stopping conveyances; submission of information to department; confidentiality.

Sec. 8510. (1) The director 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 part.

(2) The methods of sampling and analysis under subsection (1) shall be those as established by the association of American plant food control officials or the association of analytical communities, international, as those standards exist on the effective date of the amendatory act that added this subsection, and are incorporated by reference. The department may promulgate rules to update these standards. In cases not covered by such methods, or in cases where methods are available in which improved applicability has been demonstrated, the director may adopt, by rule, such other methods as are considered appropriate.

(3) Department representatives and inspectors shall have free access during regular business hours and extended operating hours to all premises where fertilizers or soil conditioners are manufactured, sold, or

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

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 part. 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.

(4) 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 the manufacturer or distributor within this state.

(5) 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 to 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, 1976 PA 442, MCL 15.231 to 15.246.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007.

Popular name: Act 451

Popular name: NREPA

324.8511 Selection of sample from package or bulk lot for comparison with label; order to cease and desist; seizing, or stopping sale of, fertilizer or soil conditioner; conditions; filing action with court.

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.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 1998, Act 276, Imd. Eff. July 27, 1998.

Popular name: Act 451

Popular name: NREPA

324.8512 Nitrates in groundwater exceeding certain limits associated with aquifer sensitivity or fertilizer use; educational materials provided to fertilizer users; authority of department director; eligibility of regional stewardship to receive certain grants; authorization to land-apply materials containing fertilizers at agronomic rates.

Sec. 8512. (1) Upon confirming the presence of nitrate in groundwater in concentration exceeding 50% of

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

the maximum contaminant level for nitrates in 20% of drinking water wells associated with an aquifer sensitivity region or fertilizer use activity, the director of the department 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 part 87.

(e) Assist the regional stewardship team in designing a regional plan to prevent further contamination of groundwater by fertilizer use activities, which plan 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 of the department, the regional stewardship team is eligible to receive grants from the freshwater protection fund established by part 87.

(3) The director of the department 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.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8512b Fertilizer containing phosphate; application to turf; requirements.

Sec. 8512b. (1) Except as provided in subsection (2), (3), (4), or (5), a person shall not apply to turf a fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5).

(2) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate (P_2O_5) in the soil is deficient to support healthy turf grass growth or establishment, a person may apply fertilizer to the turf at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(3) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subsection (2) has not been performed, a person may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the standard rate for new turf grass establishment, which shall be specified by the director after consultation with the Michigan state university extension.

(4) A person may apply biosolids, a natural fertilizer, or a manipulated manure to turf at a rate of not more than 0.25 pounds of phosphorus per 1,000 square feet at any 1 time.

(5) In addition, a person may apply fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5) to a golf course if 1 or more of the following apply:

(a) The golf course has been certified by an organization as a result of the golf course's staff having successfully completed a training program approved by the director. The director shall approve a training program if it is a continuing program, adequately addresses best management practices for use of turf fertilizer containing available phosphate, and requires trainees to demonstrate successful implementation of those best management practices.

(b) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate in the soil is deficient to support healthy golf course turf grass growth or establishment, the golf course may apply fertilizer at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(c) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subdivision (b) has not been performed, a golf course may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the rate necessary for new golf course turf grass establishment.

(6) A person shall not apply fertilizer to turf within 15 feet of any surface water, unless 1 or more of the following apply:

(a) A continuous natural vegetative buffer at least 10 feet wide separates the turf from the surface water.

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

(b) A spreader guard, deflector shield, or drop spreader is used when applying the fertilizer, and the fertilizer is not applied within 3 feet of the surface water.

(7) A person shall not clean a fertilizer spreader that is used to apply fertilizer to turf in a manner that allows wash water from the spreader to discharge directly into waters of this state, including, but not limited to, a drain under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(8) The department shall post information concerning the requirements of subsections (1) to (5) on its website and publicize the availability of that information by whatever means the department determines to be appropriate.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010;—Am. 2013, Act 151, Imd. Eff. Nov. 5, 2013.

Popular name: Act 451

Popular name: NREPA

324.8512f Release of fertilizer on impervious turf; application of fertilizer on frozen or saturated turf.

Sec. 8512f. (1) A person who releases fertilizer on an impervious surface shall do both of the following:

(a) Promptly contain the fertilizer.

(b) Either legally apply the fertilizer to turf or another appropriate site or return the fertilizer to an appropriate container.

(2) A person shall not apply a fertilizer to turf if the soil is frozen or saturated with water.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

324.8512g Residential uses of phosphorus; consumer information on use restrictions and recommended best practices.

Sec. 8512g. The department, in consultation with the fertilizer industry representatives, fertilizer retailers, statewide environmental organizations, lake groups, and other interested parties, may approve consumer information on use restrictions and recommended best practices for lawn fertilizer containing available phosphate (P_20_5), and on best management practices for other residential uses of phosphorus. The information shall be in a format and include content suitable for use by the general public or posting and distribution at retail points of sale of turf fertilizer.

History: Add. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

324.8512h Fertilizer advisory committee; membership; terms; removal; vacancy; meetings; quorum; duties; meetings subject to open meetings act; "committee" defined.

Sec. 8512h. (1) The fertilizer advisory committee is created within the department. The committee shall be composed of the following members:

(a) The director of the department of agriculture and rural development.

(b) Two members representing the fertilizer industry.

(c) One member representing the specialty fertilizer industry.

(d) Four members representing farmers and other agricultural organizations.

(e) One member from the United States Department of Agriculture Natural Resources Conservation Service.

(f) One member who is a certified crop advisor.

(g) One member representing conservation districts.

(h) The director of Michigan State University AgBioResearch.

(i) One member representing the largest statewide land conservancy in this state.

(2) The members of the committee may designate an authorized representative or substitute to represent them on the committee. Of the members first appointed by the director, 4 shall serve for 1 year, 4 for 2 years, and 4 for 3 years. Thereafter, an appointment shall be for 3 years. The director shall remove any member who is absent, either personally or through a designated representative or substitute, for 4 or more consecutive meetings. Vacancies shall be filled for the balance of an unexpired term. The committee shall meet on the call of the director, who shall serve as chairperson. The director shall call a meeting of the committee upon request of 2 or more members. A majority of the members of the committee constitute a quorum.

(3) The committee shall advise the director on the research funded under section 8514(4)(c).

(4) All meetings of the committee shall be conducted pursuant to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(5) As used in this section, "committee" means the fertilizer advisory committee created in subsection (1).

History: Add. 2015, Act 118, Eff. Oct. 1, 2015.

Compiler's note: Act 451

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

Compiler's note: NREPA

324.8513 Rules; bulk storage of fertilizers; exemption.

Sec. 8513. (1) The department may promulgate rules regarding the bulk storage of fertilizers.

(2) If storage of a material used as a beneficial use by-product for beneficial use 3 under part 115 meets the storage requirements of that part, then the storage is exempt from regulation no. 641, commercial fertilizer bulk storage, R 285.641.1 to R 285.641.18 of the Michigan administrative code.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2014, Act 178, Eff. Sept. 16, 2014.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 285.641.1 et seq. and R 285.642.1 et seq. of the Michigan Administrative Code.

324.8514 Fertilizer control fund; creation; deposits; money remaining in fund; lapse; expenditures; grants to local government agencies, institutions of higher education, or nonprofit organizations; notice to legislature.

Sec. 8514. (1) The fertilizer control fund is created within the state treasury.

(2) The state treasurer shall receive for deposit in the fund all fees, administrative or civil fines, and payments for the costs of investigations incurred by the department collected under this part. In addition, the state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall expend money from the fund, upon appropriation, only for 1 or more of the following purposes:

(a) The administration and enforcement of this part.

(b) The development of training programs to ensure the proper use and storage of fertilizer.

(c) For research necessary to ensure the adoption and implementation of practices that optimize nutrient use efficiency, ensure soil fertility, and address environmental concerns with regard to fertilizer use. Until December 31, 2019, not less than 40% of the inspection fees collected with section 8506(1) shall be used for purposes of this subdivision.

(5) The department shall not provide grants with money from the fund to local government agencies, institutions of higher education, or nonprofit organizations unless the department provides notice of the grant to the senate and house appropriations subcommittees and the senate and house fiscal agencies at least 10 days before the grant is issued.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2015, Act 118, Eff. Oct. 1, 2015.

Popular name: Act 451

Popular name: NREPA

324.8515 Revocation or refusal of license or registration; grounds; hearing; exception for refusal to sell ammonium nitrate fertilizer.

Sec. 8515. (1) The director of the department may revoke the license of a manufacturer or distributor or the registration of a fertilizer product or soil conditioner, or may refuse to license a manufacturer or distributor or to register a fertilizer product or soil conditioner, upon satisfactory evidence that the licensee has engaged in fraudulent or deceptive practices or has evaded or attempted to evade this part or the rules promulgated under this part.

(2) A license or registration shall not be revoked or refused until the licensee or applicant has been given the opportunity by the director of the department to appear for a hearing.

(3) The department shall not suspend or revoke the license of a distributor or manufacturer who refuses to sell ammonium nitrate fertilizer to a person who fails to comply with the request for information required under section 8518 or who refuses to sell ammonium nitrate fertilizer to a person who purchases that fertilizer out of season, in unusual amounts, or under a pattern or circumstances considered unusual, as described in section 8518.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2005, Act 68, Imd. Eff. July 11, 2005.

Popular name: Act 451

Popular name: NREPA

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

324.8516 Enforcement; rules.

Sec. 8516. The director of the department shall enforce this part and may promulgate rules.

History: Add. 1995, Act 60, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.8517 Local ordinance, regulation, or resolution; preemption; adoption; enforcement; identification of unreasonable adverse effects; local public meeting; contract by director with local government; compliance with training and enforcement requirements; application of fertilizer containing phosphate.

Sec. 8517. (1) Except as otherwise provided in this section, this part preempts any local ordinance, regulation, or resolution that would 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 adopt, 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 adopt 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, sale, or agricultural use 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 adopt an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and that regulates the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part only under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will otherwise exist within the local unit of government, taking 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, sale, or agricultural use 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 adopted under subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance adopted under 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 a denial within 60 days.

(5) Within 60 days after the legislative body of a local unit of government submits to the department a resolution identifying unreasonable adverse effects on the environment or public health as provided for in subsection (3)(a), the department shall hold a local public meeting to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacturing, storage, distribution, sale, or agricultural use 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 has sole authority to assess fees, register fertilizer or soil conditioner products, cancel or suspend registrations, and administer and enforce provisions of section 8512.

(7) A local unit of government that adopts an ordinance under subsection (2) or (3) shall require persons enforcing the ordinance to comply with training and enforcement requirements determined appropriate by the director.

(8) Subsection (1) does not prohibit the maintenance or enforcement of an ordinance that regulates or prohibits the application to turf of fertilizer containing the plant nutrient available phosphate (P_2O_5), but only if the ordinance was in effect on the enactment date of the amendatory act that added this subsection.

History: Add. 1998, Act 276, Imd. Eff. July 27, 1998;—Am. 2008, Act 14, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

Popular name: Act 451

Popular name: NREPA

324.8518 Ammonium nitrate fertilizer; storage methods; information to be obtained by

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

retailers; records; refusal of retailer to sell.

Sec. 8518. (1) A retailer shall secure at all times ammonium nitrate fertilizer to provide reasonable protection against vandalism, theft, or unauthorized access. Secured storage includes, but is not limited to, the following methods:

(a) Fencing.

(b) Lighting.

(c) Locks.

(2) Retailers shall obtain the following information regarding any sale of ammonium nitrate fertilizer:

(a) Date of sale.

(b) Quantity purchased.

(c) License number of the purchaser's valid state operator's license with the appropriate endorsement, if applicable, or other picture identification card number approved for purchaser identification by the department.

(d) The purchaser's name, current address, and telephone number.

(e) The agency relationship, if any, between the purchaser and the person picking up or accepting delivery of the ammonium nitrate fertilizer.

(3) Records created pursuant to this section shall be maintained by the retailer for a minimum of 2 years on a form or using a format recommended by the department. Records shall be made available for inspection and audit upon request of the director of the department.

(4) Records generated by means of the tracking system established under subsection (2) are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(5) Any retailer of ammonium nitrate fertilizer may refuse to sell to any person attempting to purchase ammonium nitrate fertilizer out of season, in unusual patterns or circumstances, or in unusual amounts as determined by the retailer.

History: Add. 2005, Act 68, Imd. Eff. July 11, 2005.

Popular name: Act 451

Popular name: NREPA

324.8519 Hearing; request.

Sec. 8519. A person aggrieved by an order issued pursuant to this part may request a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8520 Violations; penalties; remedies; injunctive action; civil action; defenses; liability for damages; applicability of provisions of revised judicature act.

Sec. 8520. (1) A person who violates or attempts to violate this part or rules promulgated under this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted directly or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for an administrative hearing that a person has violated or attempted to violate any provision of this part or a rule promulgated under this part, may impose an administrative fine of not more than $1,000.00 for each violation or attempted violation. A person shall not be fined under both this subsection and subsection (7) for the same violation or attempted violation. A person shall not be fined under this subsection for a violation described in subsection (7)(b).

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

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

(5) A person who violates this part or a rule promulgated under this part, or attempts to violate this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $5,000.00 for each violation or attempted violation, in addition to any administrative fines imposed. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(6) A person who knowingly and with malicious intent violates or attempts to violate this part or a rule

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov

promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $25,000.00 for each offense. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(7) A person who violates or attempts to violate section 8512b or 8512f is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than the following for each violation or attempted violation:

(a) Except as provided in subdivision (b), not more than $1,000.00.

(b) Not more than $50.00 if all of the following apply:

(*i*) The violation or attempted violation occurs on a single-family residential parcel, or any other parcel or contiguous parcels with a total of not more than 4 acres of turf.

(*ii*) The violation or attempted violation is committed by the property owner or lessee, a member of his or her family, or a person who resides on the property.

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

(9) The attorney general may file a civil action in which the court may impose on any person who violates or attempts to violate this part or a rule promulgated under this part, other than section 8512b or 8512f, a civil fine of not more than $5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the fund.

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

(11) A person who violates this part is liable for all damages sustained by a purchaser of a product sold in violation of this part. In an enforcement action, a court, in addition to other sanctions provided by law, may order restitution to a party injured by the purchase of a product sold in violation of this part.

(12) A civil action filed pursuant to this part is subject to applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007;—Am. 2010, Act 299, Imd. Eff. Dec. 16, 2010.

Compiler's note: Act 451

Popular name: NREPA

324.8521 Penalties and sanctions; exceptions.

Sec. 8521. The penalties and sanctions provided for violations of this part do not apply to any of the following:

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

(b) The shipment or movement of any commercial fertilizer considered to be in violation of this part, for the specific purposes of disposal or storage when conducted under the approval of the director.

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

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

324.8522 Finding of probable cause.

Sec. 8522. A court shall not allow the recovery of damages by a person against whom an administrative action was brought resulting in an order stopping the sale or use of fertilizer or fertilizer material or requiring its seizure if the court finds that there was probable cause for the action or order.

History: Add. 2006, Act 503, Eff. Mar. 30, 2007.

Compiler's note: Act 451

Popular name: NREPA

© Legislative Council, State of Michigan Courtesy of www.legislature.mi.gov