

**SUBSTITUTE FOR
SENATE BILL NO. 840**

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, and 8514 (MCL 324.8501, 324.8502, 324.8503, 324.8505,
324.8506, 324.8507, 324.8509, 324.8510, and 324.8514), section 8501
as amended by 1998 PA 276 and sections 8502, 8503, 8505, 8506,
8507, 8509, 8510, and 8514 as added by 1995 PA 60, and by adding
sections 8501a, 8519, 8520, 8521, and 8522.

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 it

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

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

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

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

16 (e) "Brand or product name" means a term, design, or trademark
17 used in connection with 1 or more grades of 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 specifications ~~furnished by the consumer before mixing~~ **PROVIDED**
23 **TO A BLENDER IN A SOIL TEST NUTRIENT RECOMMENDATION OR BLENDED AS**
24 **SPECIFICALLY REQUESTED BY THE CONSUMER PRIOR TO BLENDING.**

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

26 (i) "Director" means the director of the department of
27 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) "DISTRIBUTOR" MEANS ANY PERSON WHO DISTRIBUTES FERTILIZER FOR SALE OR USE IN THIS STATE.

(L) ~~—(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.

(M) ~~—(l)—~~ "Fertilizer material" means ~~any substance containing any recognized plant nutrient, which is used as a fertilizer or for compounding mixed fertilizers.~~ THAT IS ANY OF THE FOLLOWING:

(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 WHICH HAS BEEN PROCESSED IN SUCH A WAY THAT ITS CONTENT OF PLANT NUTRIENTS HAS NOT BEEN MATERIALLY CHANGED EXCEPT BY PURIFICATION AND CONCENTRATION.

(N) "FUND" MEANS THE FERTILIZER CONTROL FUND CREATED UNDER

1 **SECTION 8514.**

2 (O) ~~—(m)—~~ "Grade" means the percentage guarantee of total
 3 nitrogen (N), ~~—available phosphorus, or—~~ available ~~—phosphoric~~
 4 ~~acid, P_2O_5 —~~ **PHOSPHATE (P_2O_5)**, and ~~—soluble potassium, or soluble~~
 5 ~~potash, K_2O —~~ **SOLUBLE POTASH (K_2O)**, of a fertilizer and shall be
 6 stated in the same order ~~—as listed—~~ **GIVEN** in this subdivision.
 7 Indication of grade does not apply to peat or peat moss or soil
 8 conditioners.

9 (P) ~~—(n)—~~ "Groundwater" means underground water within the
 10 zone of saturation.

11 (Q) ~~—(o)—~~ "Groundwater stewardship practices" means any of a
 12 set of voluntary practices adopted by the commission of agriculture
 13 pursuant to part 87, designed to protect groundwater from
 14 contamination by fertilizers.

15 (R) ~~—(p)—~~ "Guaranteed analysis" means the minimum percentage
 16 of each plant nutrient guaranteed or claimed to be present.

17 (S) ~~—(q)—~~ "Label" means any written, printed, or graphic
 18 matter on or attached to packaged fertilizer or used to identify
 19 fertilizer distributed in bulk or held in bulk storage.

20 (T) ~~—(r)—~~ "Labeling" means all labels and other written,
 21 printed, **ELECTRONIC**, or graphic matter upon or accompanying **ANY**
 22 fertilizer at any time, and includes advertising, ~~—or—~~ sales
 23 literature, **BROCHURES, POSTERS, AND INTERNET, TELEVISION, AND RADIO**
 24 **ANNOUNCEMENTS USED IN PROMOTING THE SALE OF THAT FERTILIZER.**

25 (U) **"LICENSEE" MEANS THE PERSON WHO RECEIVES A LICENSE TO**
 26 **MANUFACTURE OR DISTRIBUTE FERTILIZERS UNDER THIS PART.**

27 (V) **"LOT" MEANS AN IDENTIFIABLE QUANTITY OF FERTILIZER THAT**

1 CAN BE SAMPLED OFFICIALLY ACCORDING TO METHODS ADOPTED UNDER
2 SECTION 8510, THAT AMOUNT CONTAINED IN A SINGLE VEHICLE, OR THAT
3 AMOUNT DELIVERED UNDER A SINGLE INVOICE.

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

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

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

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

16 ~~——(w) "Official sample" means a sample of fertilizer taken by a~~
17 ~~representative of the department of agriculture in accordance with~~
18 ~~acceptable methods.~~

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

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

25 ~~——(z) "Percent" and "percentage" mean the percentage by weight.~~

26 ~~——(aa) "Soil conditioner" means a substance that is used or~~
27 ~~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. 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,

1 FIRM, LIMITED LIABILITY COMPANY, OR CORPORATION.

2 (H) "PRIMARY NUTRIENTS" MEANS TOTAL NITROGEN, AVAILABLE
3 PHOSPHATE, OR SOLUBLE POTASH, OR ANY COMBINATION OF THOSE
4 NUTRIENTS.

5 (I) "REGISTRANT" MEANS THE PERSON WHO REGISTERS A PRODUCT
6 UNDER THIS PART.

7 (J) "SOIL CONDITIONER" MEANS ANY SUBSTANCE THAT IS USED OR
8 INTENDED FOR USE TO IMPROVE THE PHYSICAL CHARACTERISTICS OF SOIL,
9 INCLUDING, BUT NOT LIMITED TO, MATERIALS SUCH AS PEAT MOSS AND PEAT
10 PRODUCTS, COMPOSTED PRODUCTS, SYNTHETIC SOIL CONDITIONERS, OR OTHER
11 PRODUCTS THAT ARE WORKED INTO THE SOIL OR ARE APPLIED ON THE
12 SURFACE TO IMPROVE THE PROPERTIES OF THE SOIL FOR ENHANCING PLANT
13 GROWTH. SOIL CONDITIONER DOES NOT INCLUDE GUARANTEED PLANT
14 NUTRIENTS, AGRICULTURAL LIMING MATERIALS, PESTICIDES, UNMANIPULATED
15 ANIMAL OR VEGETABLE MANURES, HORMONES, BACTERIAL INOCULANTS, AND
16 PRODUCTS USED IN DIRECTLY INFLUENCING OR CONTROLLING PLANT GROWTH.
17 A SOIL CONDITIONER FOR WHICH CLAIMS ARE MADE OF NUTRIENT VALUE IS
18 CONSIDERED A FERTILIZER FOR THE PURPOSES OF THIS PART.

19 (K) "SPECIALTY FERTILIZER" MEANS ANY FERTILIZER DISTRIBUTED
20 PRIMARILY FOR NONFARM USE, SUCH AS USE IN CONNECTION WITH HOME,
21 GARDENS, LAWNS, SHRUBBERY, FLOWERS, GOLF COURSES, PARKS, AND
22 CEMETERIES, AND MAY INCLUDE FERTILIZERS USED FOR RESEARCH OR
23 EXPERIMENTAL PURPOSES.

24 (L) "TON" MEANS A NET WEIGHT OF 2,000 POUNDS AVOIRDUPOIS.

25 (M) "USE" MEANS THE LOADING, MIXING, APPLYING, STORING,
26 TRANSPORTING, OR DISPOSING OF A FERTILIZER.

27 Sec. 8502. (1) A packaged fertilizer distributed in this

1 state, including packaged ~~custom~~ mixed fertilizer and soil
2 conditioner, shall have placed on or affixed to the package or
3 container a label setting forth in clearly legible and conspicuous
4 form ~~all of~~ the following:

5 (a) The net weight of the contents of the package, except that
6 **SOIL CONDITIONERS**, peat, or peat moss ~~shall~~ **MAY** be designated by
7 volume.

8 (b) Brand or product name.

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

11 (d) Grade. **HOWEVER, THE GRADE IS NOT REQUIRED WHEN NO PRIMARY**
12 **NUTRIENTS ARE CLAIMED.** This subdivision does not apply to peat or
13 peat moss, ~~or~~ material sold as a soil conditioner, **OR FERTILIZER**
14 **FOR WHICH NO PRIMARY NUTRIENTS ARE CLAIMED.**

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

17 (2) A fertilizer distributed in this state in bulk, **EXCEPT A**
18 **CUSTOM BLEND**, shall be accompanied by a written or printed invoice
19 or statement to be furnished to the purchaser at the time of
20 delivery containing in clearly legible and conspicuous form ~~all of~~
21 the following information:

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

24 (b) Name and address of purchaser.

25 (c) Date of sale.

26 (d) Brand or product name.

27 (e) Grade. **HOWEVER, THE GRADE IS NOT REQUIRED WHEN NO PRIMARY**

1 NUTRIENTS ARE CLAIMED.

2 (f) Guaranteed analysis.

3 (g) Net weight.

4 (3) A CUSTOM BLEND SHALL BE ACCOMPANIED BY A WRITTEN OR
5 PRINTED INVOICE OR STATEMENT TO BE FURNISHED TO THE PURCHASER AT
6 THE TIME OF DELIVERY CONTAINING IN CLEARLY LEGIBLE AND CONSPICUOUS
7 FORM THE FOLLOWING INFORMATION:

8 (A) NAME AND ADDRESS OF THE LICENSED MANUFACTURER OR
9 DISTRIBUTOR.

10 (B) NAME AND ADDRESS OF PURCHASER.

11 (C) DATE OF SALE.

12 (D) EITHER THE NET WEIGHT AND GUARANTEED ANALYSIS OF THE
13 CUSTOM BLEND OR THE GUARANTEED ANALYSIS AND NET WEIGHT OF EACH
14 MATERIAL USED IN THE FORMULATION OF THE CUSTOM BLEND OR BOTH.

15 (4) ~~—(3)—~~ Fertilizer in bulk storage shall be identified with
16 a label attached to the storage bin or container giving the name
17 and address of the licensed manufacturer or distributor and the
18 name and grade of the product.

19 Sec. 8503. (1) The guaranteed analysis ~~for the primary~~
20 ~~nutrients of nitrogen, available phosphoric acid, P_2O_5 , and soluble~~
21 ~~potash, K_2O , shall be expressed as whole numbers on the label~~ **SHALL**
22 **SHOW THE MINIMUM PERCENTAGE OF PLANT NUTRIENTS CLAIMED** in the
23 following order and form:

24 (A) Total nitrogen ~~—, N—~~ (N). _____ %

25 Available ~~phosphoric acid, P_2O_5~~ **PHOSPHATE (P_2O_5)**. _____ %

26 Soluble potash ~~, K_2O~~ (**K_2O**). _____ %

27 ~~—(2) A mixed fertilizer may not be sold if the sum of the~~

1 ~~guarantees for the nitrogen, available phosphoric acid, and soluble~~
2 ~~potash totals less than 20%, except specialty fertilizers permitted~~
3 ~~to be sold by product registration issued by the department.~~

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

8 (B) WHEN APPLIED TO MIXED FERTILIZERS, GRADE SHALL BE GIVEN IN
9 WHOLE NUMBERS ONLY. HOWEVER, SPECIALTY FERTILIZERS WITH A GUARANTEE
10 OF LESS THAN 1% OF TOTAL NITROGEN, AVAILABLE PHOSPHATE, AND SOLUBLE
11 POTASH MAY USE FRACTIONAL UNITS. FERTILIZER MATERIALS, BONE MEAL,
12 MANURES, AND SIMILAR MATERIALS MAY BE GUARANTEED IN FRACTIONAL
13 UNITS.

14 (C) WHEN APPLIED TO CUSTOM BLENDS, GRADE CAN EITHER BE GIVEN
15 IN WHOLE NUMBERS OR IN NUMBERS EXPRESSED TO THE NEAREST 1/10 OF A
16 PERCENT IN THE FORM OF A DECIMAL IN THE ANALYSIS.

17 (D) FOR UNACIDULATED MINERAL PHOSPHATIC MATERIAL AND BASIC
18 SLAG, BONE, TANKAGE, AND OTHER ORGANIC PHOSPHATIC MATERIALS, THE
19 TOTAL PHOSPHATE OR DEGREE OF FINENESS, OR BOTH, MAY ALSO BE
20 GUARANTEED.

21 (2) ~~—(4)—~~ Additional plant nutrients, other than nitrogen,
22 phosphorus, and potassium, claimed to be present in any form or
23 manner shall be guaranteed on the elemental basis, at levels not
24 less than those established by rules. ~~The materials shall be~~
25 ~~approved by the director of the department, by and with the advice~~
26 ~~of the director of the Michigan agricultural experiment station.~~

27 OTHER BENEFICIAL COMPOUNDS OR SUBSTANCES, DETERMINABLE BY

1 LABORATORY METHODS, MAY BE GUARANTEED IF APPROVED BY THE DIRECTOR.

2 Sec. 8505. (1) A person shall not distribute a specialty
3 fertilizer or soil conditioner ~~until~~ **UNLESS** it is registered ~~by~~
4 ~~the manufacturer or distributor~~ with the department. ~~and the~~
5 ~~appropriate groundwater protection fees provided for in section~~
6 ~~8715 have been submitted.~~ An application ~~in duplicate~~ listing
7 each brand and product name of each grade of specialty fertilizer
8 or soil conditioner shall be made on a form furnished by the
9 director and shall be accompanied with ~~a fee of \$25.00~~ **THE FEES**
10 **DESCRIBED IN SUBSECTION (2)** for each brand and product name of each
11 grade. Labels for each brand and product name of each grade shall
12 accompany the application. Upon approval of an application by the
13 director, a copy of the registration **APPROVAL** shall be furnished to
14 the applicant. All registrations expire on December 31 of each
15 year.

16 (2) A PERSON APPLYING FOR A REGISTRATION UNDER SUBSECTION (1)
17 SHALL PAY THE FOLLOWING ANNUAL FEES FOR EACH BRAND AND PRODUCT NAME
18 OF EACH GRADE:

19 (A) REGISTRATION FEE OF \$25.00.

20 (B) APPROPRIATE GROUNDWATER AND FRESHWATER PROTECTION FEES
21 PROVIDED FOR IN SECTION 8715.

22 (3) A DISTRIBUTOR IS NOT REQUIRED TO REGISTER A BRAND OF
23 FERTILIZER THAT IS REGISTERED UNDER THIS PART BY ANOTHER PERSON, IF
24 THE LABEL DOES NOT DIFFER IN ANY RESPECT.

25 (4) A MANUFACTURER OR DISTRIBUTOR OF CUSTOM BLEND SPECIALTY
26 FERTILIZERS FOR HOME LAWNS, GOLF COURSES, RECREATIONAL AREAS, OR
27 OTHER NONFARM AREAS SHALL NOT BE REQUIRED TO REGISTER EACH GRADE

1 DISTRIBUTED BUT SHALL LICENSE THEIR FIRM ON AN APPLICATION
2 FURNISHED BY THE DIRECTOR FOR AN ANNUAL FEE OF \$100.00 AND SHALL
3 LABEL THE FERTILIZER AS PROVIDED IN SECTION 8502. THE LABEL OF EACH
4 FERTILIZER DISTRIBUTED UNDER THIS SUBSECTION SHALL BE MAINTAINED BY
5 THE MANUFACTURER OR DISTRIBUTOR FOR 1 YEAR FOR INSPECTION BY THE
6 DIRECTOR.

7 (5) A MANUFACTURER OR DISTRIBUTOR OF SOIL CONDITIONERS BLENDED
8 ACCORDING TO SPECIFICATIONS PROVIDED TO A BLENDER OR BLENDED AS
9 SPECIFICALLY REQUESTED BY THE CONSUMER PRIOR TO BLENDING SHALL
10 EITHER REGISTER EACH BRAND OR BLEND DISTRIBUTED OR LICENSE ITS FIRM
11 ON AN APPLICATION FURNISHED BY THE DIRECTOR FOR AN ANNUAL FEE OF
12 \$100.00 AND SHALL LABEL THE SOIL CONDITIONER AS PROVIDED IN SECTION
13 8502. THE LABEL OF EACH SOIL CONDITIONER DISTRIBUTED UNDER THIS
14 SUBSECTION SHALL BE MAINTAINED BY THE MANUFACTURER OR DISTRIBUTOR
15 FOR 1 YEAR FOR INSPECTION BY THE DIRECTOR.

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

22 (2) Payment of the inspection fee shall be made on the basis
23 of tonnage reports setting forth the number of tons of each grade
24 of fertilizer and soil conditioner and the number of cubic yards of
25 peat or peat moss sold or distributed in this state. The reports
26 shall cover the periods of the year and be made in a manner
27 specified by the director ~~of the department~~ in rules, and shall

1 be filed with the department not later than 30 days after the close
 2 of each period. The time may be extended for cause for an
 3 additional 15 days only on written request to, and approval by, the
 4 department. Remittance to cover the inspection fee shall accompany
 5 each tonnage report. Payments due of less than ~~-\$1.00~~ **\$5.00 ARE**
 6 **WAIVED**, ~~or~~ **AND** refunds ~~resulting from overpayment~~ of less than
 7 ~~\$1.00, are waived~~ **\$5.00 WILL NOT BE PROCESSED, UNLESS REQUESTED IN**
 8 **WRITING.** ~~A penalty of 10% of the amount due, with a minimum of~~
 9 ~~\$10.00, shall be assessed against the licensee for all amounts not~~
 10 ~~paid when due.~~ **FOR ANY REPORT NOT FILED WITH THE DEPARTMENT BY THE**
 11 **DUE DATE, A PENALTY OF \$50.00 OR 10% OF THE AMOUNT DUE, WHICHEVER**
 12 **IS GREATER, SHALL BE ASSESSED.** Unpaid fees and penalties constitute
 13 a debt and become the basis of a judgment against the licensee.
 14 Records upon which the statement of tonnage is based are subject to
 15 department audit.

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

21 Sec. 8507. (1) Each licensee **AND REGISTRANT** shall maintain for
 22 a period of 3 years a record of quantities and grades of fertilizer
 23 and soil conditioner sold or distributed by the licensee **OR**
 24 **REGISTRANT** and shall make the records available for inspection and
 25 audit **DURING NORMAL BUSINESS HOURS** on request of the department.
 26 Each ~~vendor of fertilizer and soil conditioner~~ **DISTRIBUTOR** shall
 27 maintain for a period of 3 years shipping data such as invoices and

1 freight bills pertaining to fertilizer and soil conditioner that
2 establish date and origin of the shipment, and shall make the
3 records available for inspection and audit on request of the
4 department.

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

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

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

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

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

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

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

27 **(F) DISTRIBUTE AN ADULTERATED PRODUCT.**

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

5 (2) **THE METHODS OF SAMPLING AND ANALYSIS UNDER SUBSECTION (1)**
6 **SHALL BE THOSE AS ESTABLISHED BY THE ASSOCIATION OF AMERICAN PLANT**
7 **FOOD CONTROL OFFICIALS OR THE ASSOCIATION OF ANALYTICAL**
8 **COMMUNITIES, INTERNATIONAL, AS THOSE STANDARDS EXIST ON THE**
9 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION,**
10 **AND ARE INCORPORATED BY REFERENCE. THE DEPARTMENT MAY PROMULGATE**
11 **RULES TO UPDATE THESE STANDARDS. IN CASES NOT COVERED BY SUCH**
12 **METHODS, OR IN CASES WHERE METHODS ARE AVAILABLE IN WHICH IMPROVED**
13 **APPLICABILITY HAS BEEN DEMONSTRATED, THE DIRECTOR MAY ADOPT, BY**
14 **RULE, SUCH OTHER METHODS AS ARE CONSIDERED APPROPRIATE.**

15 (3) ~~—(2)—~~ Department representatives and inspectors shall have
16 free access during regular business hours **AND EXTENDED OPERATING**
17 **HOURS** to all premises where fertilizers or soil conditioners are
18 manufactured, sold, or stored, and to all trucks or other vehicles
19 and vessels used in the transportation of a fertilizer or soil
20 conditioner in this state, to determine compliance with this part.
21 Department representatives and inspectors may stop any conveyance
22 transporting fertilizer or soil conditioner for the purpose of
23 inspecting and sampling the products and examining their labeling.

24 (4) ~~—(3)—~~ A manufacturer or distributor of fertilizer or soil
25 conditioner shall submit to the department, upon request, product
26 samples, copies of labeling, or any other data or information that
27 the department may request concerning composition and claims and

1 representations made for fertilizers and soil conditioners
2 manufactured or distributed by the manufacturer or distributor
3 within this state.

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

13 Sec. 8514. ~~A person who violates this part is guilty of a~~
14 ~~misdemeanor. A person who violates this part is liable for all~~
15 ~~damages sustained by a purchaser of a product sold in violation of~~
16 ~~this part. In an enforcement action, a court, in addition to other~~
17 ~~penalties provided by law, may order restitution to a party injured~~
18 ~~by the purchase of a product sold in violation of this part.~~

19 (1) THE FERTILIZER CONTROL FUND IS CREATED WITHIN THE STATE
20 TREASURY.

21 (2) THE STATE TREASURER SHALL RECEIVE FOR DEPOSIT IN THE FUND
22 ALL FEES, ADMINISTRATIVE OR CIVIL FINES, AND PAYMENTS FOR THE COSTS
23 OF INVESTIGATIONS INCURRED BY THE DEPARTMENT COLLECTED UNDER THIS
24 PART. IN ADDITION, THE STATE TREASURER MAY RECEIVE MONEY OR OTHER
25 ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE
26 TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE
27 TREASURER SHALL CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND

1 INVESTMENTS.

2 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
3 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

4 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
5 APPROPRIATION, ONLY FOR 1 OR MORE OF THE FOLLOWING PURPOSES:

6 (A) THE ADMINISTRATION AND ENFORCEMENT OF THIS PART.

7 (B) THE DEVELOPMENT OF TRAINING PROGRAMS TO ENSURE THE PROPER
8 USE AND STORAGE OF FERTILIZER.

9 SEC. 8519. A PERSON AGGRIEVED BY AN ORDER ISSUED PURSUANT TO
10 THIS PART MAY REQUEST A HEARING PURSUANT TO THE ADMINISTRATIVE
11 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

12 SEC. 8520. (1) A PERSON WHO VIOLATES THIS PART OR RULES
13 PROMULGATED UNDER THIS PART IS SUBJECT TO THE PENALTIES AND
14 REMEDIES PROVIDED IN THIS PART REGARDLESS OF WHETHER HE OR SHE
15 ACTED DIRECTLY OR THROUGH AN EMPLOYEE OR AGENT.

16 (2) THE DIRECTOR, UPON FINDING AFTER NOTICE AND AN OPPORTUNITY
17 FOR AN ADMINISTRATIVE HEARING THAT A PERSON HAS VIOLATED OR
18 ATTEMPTED TO VIOLATE ANY PROVISION OF THIS PART OR A RULE
19 PROMULGATED UNDER THIS PART, MAY IMPOSE AN ADMINISTRATIVE FINE OF
20 NOT MORE THAN \$1,000.00 FOR EACH VIOLATION OR ATTEMPTED VIOLATION.

21 (3) IF THE DIRECTOR FINDS THAT A VIOLATION OR ATTEMPTED
22 VIOLATION HAS OCCURRED DESPITE THE EXERCISE OF DUE CARE OR DID NOT
23 RESULT IN SIGNIFICANT HARM TO HUMAN HEALTH OR THE ENVIRONMENT, THE
24 DIRECTOR MAY ISSUE A WARNING INSTEAD OF IMPOSING AN ADMINISTRATIVE
25 FINE.

26 (4) THE DIRECTOR SHALL ADVISE THE ATTORNEY GENERAL OF THE
27 FAILURE OF ANY PERSON TO PAY AN ADMINISTRATIVE FINE IMPOSED UNDER

1 THIS SECTION. THE ATTORNEY GENERAL SHALL BRING AN ACTION IN A COURT
2 OF COMPETENT JURISDICTION TO RECOVER THE FINE.

3 (5) A PERSON WHO VIOLATES THIS PART OR A RULE PROMULGATED
4 UNDER THIS PART, OR ATTEMPTS TO VIOLATE THIS PART OR A RULE
5 PROMULGATED UNDER THIS PART, IS GUILTY OF A MISDEMEANOR PUNISHABLE
6 BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE
7 THAN \$5,000.00 FOR EACH VIOLATION OR ATTEMPTED VIOLATION, IN
8 ADDITION TO ANY ADMINISTRATIVE FINES IMPOSED.

9 (6) A PERSON WHO KNOWINGLY AND WITH MALICIOUS INTENT VIOLATES
10 THIS PART OR A RULE PROMULGATED UNDER THIS PART IS GUILTY OF A
11 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR
12 A FINE OF NOT MORE THAN \$25,000.00 FOR EACH OFFENSE.

13 (7) THE DIRECTOR MAY BRING AN ACTION TO ENJOIN THE VIOLATION
14 OR THREATENED VIOLATION OF THIS PART OR A RULE PROMULGATED UNDER
15 THIS PART IN A COURT OF COMPETENT JURISDICTION OF THE COUNTY IN
16 WHICH THE VIOLATION OCCURS OR IS ABOUT TO OCCUR.

17 (8) THE ATTORNEY GENERAL MAY FILE A CIVIL ACTION IN WHICH THE
18 COURT MAY IMPOSE ON ANY PERSON WHO VIOLATES THIS PART OR A RULE
19 PROMULGATED UNDER THIS PART OR ATTEMPTS TO VIOLATE THIS PART OR A
20 RULE PROMULGATED UNDER THIS PART A CIVIL FINE OF NOT MORE THAN
21 \$5,000.00 FOR EACH VIOLATION OR ATTEMPTED VIOLATION. IN ADDITION,
22 THE ATTORNEY GENERAL MAY BRING AN ACTION IN CIRCUIT COURT TO
23 RECOVER THE REASONABLE COSTS OF THE INVESTIGATION FROM ANY PERSON
24 WHO VIOLATED THIS PART OR ATTEMPTED TO VIOLATE THIS PART. MONEY
25 RECOVERED UNDER THIS SUBSECTION SHALL BE FORWARDED TO THE STATE
26 TREASURER FOR DEPOSIT INTO THE FUND.

27 (9) IN DEFENSE OF AN ACTION FILED UNDER THIS SECTION FOR A

1 VIOLATION OF THIS PART, IN ADDITION TO ANY OTHER LAWFUL DEFENSE, A
2 PERSON MAY PRESENT EVIDENCE AS AN AFFIRMATIVE DEFENSE THAT, AT THE
3 TIME OF THE ALLEGED VIOLATION OR ATTEMPTED VIOLATION, HE OR SHE WAS
4 IN COMPLIANCE WITH THIS PART AND RULES PROMULGATED UNDER THIS PART.

5 (10) A PERSON WHO VIOLATES THIS PART IS LIABLE FOR ALL DAMAGES
6 SUSTAINED BY A PURCHASER OF A PRODUCT SOLD IN VIOLATION OF THIS
7 PART. IN AN ENFORCEMENT ACTION, A COURT, IN ADDITION TO OTHER
8 SANCTIONS PROVIDED BY LAW, MAY ORDER RESTITUTION TO A PARTY INJURED
9 BY THE PURCHASE OF A PRODUCT SOLD IN VIOLATION OF THIS PART.

10 (11) APPLICABLE PROVISIONS OF THE REVISED JUDICATURE ACT OF
11 1961, 1961 PA 236, MCL 600.101 TO 600.9948, APPLY TO CIVIL ACTIONS
12 FILED PURSUANT TO THIS PART.

13 SEC. 8521. THE PENALTIES AND SANCTIONS PROVIDED FOR VIOLATIONS
14 OF THIS PART DO NOT APPLY TO ANY OF THE FOLLOWING:

15 (A) A COMMERCIAL CARRIER WHILE LAWFULLY ENGAGED IN
16 TRANSPORTING A COMMERCIAL FERTILIZER WITHIN THIS STATE, IF THE
17 CARRIER, UPON REQUEST, PERMITS THE DIRECTOR TO COPY ALL RECORDS
18 SHOWING THE TRANSACTIONS IN AND MOVEMENT OF THE COMMERCIAL
19 FERTILIZER.

20 (B) THE SHIPMENT OR MOVEMENT OF ANY COMMERCIAL FERTILIZER
21 CONSIDERED TO BE IN VIOLATION OF THIS PART, FOR THE SPECIFIC
22 PURPOSES OF DISPOSAL OR STORAGE WHEN CONDUCTED UNDER THE APPROVAL
23 OF THE DIRECTOR.

24 (C) PUBLIC OFFICIALS OF THIS STATE AND THE FEDERAL GOVERNMENT
25 WHILE ENGAGED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES IN
26 ADMINISTERING THIS PART OR RULES PROMULGATED UNDER THIS PART.

27 SEC. 8522. A COURT SHALL NOT ALLOW THE RECOVERY OF DAMAGES BY

Senate Bill No. 840 (S-5) as amended December 13, 2006

1 A PERSON AGAINST WHOM AN ADMINISTRATIVE ACTION WAS BROUGHT
2 RESULTING IN AN ORDER STOPPING THE SALE OR USE OF FERTILIZER OR
3 FERTILIZER MATERIAL OR REQUIRING ITS SEIZURE IF THE COURT FINDS
4 THAT THERE WAS PROBABLE CAUSE FOR THE ACTION OR ORDER.

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