

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 473

An Act to amend and reenact §§ 3.1-106.2, 3.1-106.6, 3.1-126.2:1 and 3.1-126.4 of the Code of Virginia, relating to fertilizer and lime permit fees.

[S 677]

Approved April 2, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-106.2, 3.1-106.6, 3.1-126.2:1 and 3.1-126.4 of the Code of Virginia are amended and reenacted as follows:

§ 3.1-106.2. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.

"Brand" means a term, design, trademark or product name under which a regulated product is distributed.

"Bulk" means in nonpackaged form.

"Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

"Commercial fertilizer" means a fertilizer distributed for farm use, or for any other use, other than any specialty fertilizer use.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Compost" means a biologically stable material derived from the composting process.

"Composting" means the biological decomposition of organic matter. It may be accomplished by mixing and piling so as to promote aerobic decay, anaerobic decay, or both aerobic and anaerobic decay.

"Contractor-applicator" means any person ~~who distributes or applies any regulated product, for compensation, either full-time or part-time, except as a licensee or as an agent of a licensee required to hold a permit to distribute or apply any regulated product pursuant to subsection M of § 3.1-106.6.~~

"Custom medium" means a horticultural growing medium which is prepared to the exact specifications of the person who will be planting in the medium and delivered to that person without intermediate or further distribution.

"Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which may result from a lack of nutrient ingredients, or from lack of uniformity.

"Department" means the Department of Agriculture and Consumer Services.

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter, the chemical or physical characteristics of a regulated product, or to offer for sale, sell, barter, warehouse or otherwise supply regulated product in the Commonwealth.

"Distributor" means any person who distributes.

"Fertilizer" means any substance containing one or more recognized plant nutrients, which 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, and other products exempted by regulation.

"Fertilizer material" means a fertilizer which:

a. Contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), available phosphate (P205) and potash (K20);

b. Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

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

"Grade" means the percentage of total nitrogen (N), available phosphate (P205) and soluble potash (K20), stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis, except that fertilizer materials, specialty fertilizers, bone meal, manures and similar raw materials may be guaranteed in fractional units.

"Guaranteed analysis" means that information required by this chapter to be displayed on the label of a regulated product.

"Guarantor" means the person whose name appears on the label of a regulated product.

"Horticultural growing medium" means any substance or mixture of substances which is promoted as or is intended to function as an artificial soil for the managed growth of horticultural crops.

"Industrial co-product" means a product derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner or horticultural growing medium.

"Investigational allowance" means an allowance for variations, inherent in the taking, preparation,

and analysis of an official sample.

"Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a regulated product, including an invoice.

"Labeling" means all written, printed, or graphic matter, upon or accompanying any regulated product, including invoices, advertisements, brochures, posters, and television and radio announcements, used in promoting the sale of such regulated product.

"Licensee" means the person who receives a license to distribute any regulated product under the provisions of this chapter.

"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in any way alters the chemical or physical characteristics of any regulated product.

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

"Official analysis" means the analysis of an official sample, made by the Commissioner or his agent.

"Official sample" means the sample of regulated product taken by the Commissioner or his agent, and designated as "official" by the Board.

"Percent" or "percentage" means the percentage by weight.

"Primary nutrient" includes nitrogen (N), available phosphate (P2O5), and soluble potash (K2O).

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Registrant" means the person who registers regulated products, under the provisions of this chapter.

"Regulated product" means any product governed by this chapter, including any fertilizer, specialty fertilizer, soil amendment, soil conditioner, and horticultural growing medium.

"Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared or sold for manurial, soil enriching, or soil corrective purposes, or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or producing any chemical or physical change in the soil. The following are exempt from the definition of "soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures, soil conditioners, horticultural growing media, agricultural liming materials, unmixed mulch and unmixed peat.

"Soil conditioner" means any substance or mixture of substances imported, manufactured, prepared or sold for soil corrective purposes, including but not limited to polyelectrolytes such as complex vinyl and acrylic compounds and certain cellulose and lignin derivatives.

"Specialty fertilizer" means a fertilizer distributed for nonfarm use, including, by way of example, but not by way of limitation, home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

"Stop sale, use, removal, or seizure order" means an order which prohibits the distributor from selling, relocating, using, or disposing of a lot of regulated product, or portion thereof, in any manner, until the Commissioner or his agent or the court gives written permission to sell, relocate, use or dispose of the lot of regulated product or portion thereof.

"Ton" means a net weight of two thousand pounds avoirdupois.

"Unmanipulated manure" means substances composed of the excreta of domestic animals, or domestic fowls, which has not been processed or conditioned in any manner, including but not limited to processing or conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any material or materials (other than those which have been used for bedding, sanitary or feeding purposes for such animals or fowls), or by any other means.

§ 3.1-106.6. Licensing, permitting and registration.

A. The license year for all distributors and manufacturers, permit year for all contractor-applicators, registration year for any regulated product, and tonnage reporting year are July 1 through June 30 of the following year. Each license, permit or registration shall be issued to expire on June 30 of the year for which it is issued, provided that any license, permit or registration shall be valid through July 31 of the next ensuing license, permit or registration year or until the issuance of the renewal license, permit or registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the year for which the current license, permit, or registration was issued. The manufacturer or guarantor shall file the tonnage report and pay the inspection fee to the Commissioner on August 1 of the year following the license year.

B. Any person whose name appears upon the label of any regulated product as manufacturer or distributor shall obtain a license to distribute in the Commonwealth from the Commissioner prior to distributing said regulated product. The person who distributes regulated product shall file an application with the Commissioner on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of fifty dollars.

C. Any person who distributes regulated product shall obtain a license prior to distributing any regulated product for each manufacturing location that it operates and that distributes any regulated product within the Commonwealth. The person who distributes regulated product shall apply for a license on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of fifty dollars for each manufacturing location that distributes in the Commonwealth.

D. Any person who distributes regulated product shall include on the application the following:

1. The name and address of the applicant; and
2. The name and address of each of the applicant's distribution points in the Commonwealth.

E. The licensee shall show the name and address shown on the license on:

1. The labels of any regulated product, and pertinent invoices thereof, distributed by the licensee in the Commonwealth; and

2. All storage facilities for any regulated product distributed by the licensee in the Commonwealth.

F. The licensee shall inform the Commissioner in writing of additional distribution points established during the period of the license.

G. In addition to licensing requirements, any person whose name is on the label of and who distributes in the Commonwealth any specialty fertilizer packaged in containers of fifty pounds or less dry net weight, or five gallons or less liquid net volume, shall apply for registration for such specialty fertilizer with the Commissioner on forms furnished or approved by the Commissioner; shall pay to the Commissioner by July 1 of each registration year a registration fee of fifty dollars for each grade under a given brand prior to distributing said fertilizer in the Commonwealth; and shall provide labels for each grade under a given brand with the application. The Commissioner or his agent shall furnish a copy of the registration to the applicant after approval of the registration.

H. In addition to the licensing requirements, any person who distributes in the Commonwealth a soil amendment, soil conditioner, or horticultural growing medium shall apply for registration for such soil amendment, soil conditioner, or horticultural growing medium with the Commissioner on forms furnished or approved by the Commissioner; pay to the Commissioner by July 1 of each registration year a registration fee of \$100 for each product name or brand of soil amendment, soil conditioner or horticultural growing medium prior to distributing said product in the Commonwealth; and provide labels for each product name or brand with the application. The Commissioner or his agent shall furnish a copy of the registration to the applicant after approval of the registration.

I. Custom-media and horticultural growing media planted with live plant material are exempt from labeling and registration requirements and inspection fees.

J. Any person applying for registration of a specialty fertilizer, soil amendment, soil conditioner, or horticultural growing medium shall include with the application a label including the following information:

1. For specialty fertilizer, the grade under a given brand; for soil amendments, soil conditioners, or horticultural growing media, the product name or brand;

2. The guaranteed analysis;

3. The name and address of the registrant; and

4. The quantity statement.

K. The Commissioner or his agent may require verification of any labeling claims for any regulated product.

L. If the Commissioner or his agent identifies any unregistered regulated product in commerce in the Commonwealth during the registration year, the Commissioner or his agent shall give the guarantor a grace period of fifteen working days from issuance of notification within which to register the regulated product. Any person required to register any regulated product who fails to register the regulated product within the grace period shall pay to the Commissioner a fifty dollar late fee in addition to the registration fee. The Commissioner or his agent may issue a stop sale, use, removal or seizure order upon any regulated product until the registration is issued.

M. ~~Any person desiring to become a contractor-applicator of fertilizer shall, before engaging in business as a contractor-applicator, obtain a permit to do business in the Commonwealth. Any person who applies for a permit shall do so with the Commissioner on a form furnished or approved by the Commissioner and shall pay to the Commissioner a permit fee of fifty dollars. No person, other than a licensee or an agent of a licensee, may distribute or apply any regulated product for profit, unless (i) the person completes an application form furnished by the Commissioner, pays the fifty-dollar annual fee required to be a contractor-applicator, and holds a permit from the Commissioner to be a contractor-applicator; or (ii) the person is an employee or agent of a contractor-applicator who holds a valid permit, in which case no permit is required and no fee is due from such employee or agent. The applicant contractor-applicator shall guarantee compliance with all provisions of this chapter to include an assurance of delivery of the grade of fertilizer as described on the consumer's invoice. The Commissioner or his agent shall furnish a copy of the permit to the applicant after approval of the application.~~

N. Any person who engages in business as a manufacturer or contractor-applicator for a period of at least thirty days or more, and who has failed to obtain a license or permit during that period, shall pay to the Commissioner a fifty dollar ~~license or permit~~ late fee, in addition to the ~~application~~ license or permit fee.

§ 3.1-126.2:1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural liming material" means any limestone with calcium and magnesium compounds that has

the capacity, and whose intended purpose is, to neutralize soil acidity.

"Applicant" means the person who applies for, or requests, a license, or applies for registration of any liming material; or applies to become a contractor.

"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.

"Brand" means the term, designation, trademark, product name or other specific designation under which any liming material is offered for sale.

"Bulk" means materials in nonpackaged form.

"Calcium carbonate equivalent" means the acid neutralizing capacity of any liming material, expressed as weight percentage of calcium carbonate.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Contractor" means any person ~~except the registrant or licensee who sells~~ *required to hold a permit to sell* any bulk liming material to the consumer *pursuant to subsection G of § 3.1-126.4.*

"Department" means the Department of Agriculture and Consumer Services.

"Distributor" means any person who imports or consigns, manufactures, produces, compounds, mixes, or blends any liming material, or who offers for sale, sells, barter or otherwise supplies any liming material.

"Effective Neutralizing Value" or "ENV" means a relative value using the calcium oxide content, magnesium oxide content and fineness to express the effectiveness of an agricultural liming material in neutralizing soil acidity. This term is synonymous with Effective Neutralizing Power (ENP).

"Fineness" means the percentage by weight of the material which will pass through United States Standards sieves of specified sizes.

"Industrial co-product used to neutralize soil acid" means a waste or by-product of an industrial process that contains any compound not normally found in limestone as defined in this chapter that has the capacity, and whose intended purpose is, to neutralize soil acidity.

"Kind" means one of the two classes of liming material as defined in this chapter.

"Label" means any written or printed matter on, or attached to, the package, or on the delivery ticket which accompanies bulk shipments, of any liming material.

"Licensed" or "licensee" means the person issued a license to distribute any liming material in the Commonwealth.

"Limestone" means a material consisting essentially of calcium carbonate, or a combination of calcium carbonate and magnesium carbonate, capable of neutralizing soil acidity.

"Liming material" means any agricultural liming material and any industrial co-product used to neutralize soil acid as defined in this chapter.

"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, imports or consigns liming material, or who offers for sale, sells, barter or otherwise supplies liming material.

"Percent" or "percentage" means by weight.

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Registrant" means the person registering any liming material pursuant to the provisions of this chapter.

"Standard liming ton" means a ton of agricultural liming material with a calcium carbonate equivalent of ninety percent.

"Stop sale, use, removal or seizure order" means an order which prohibits the distributor from selling, relocating, using, or disposing of a lot of liming material, or portion thereof, in any manner, until the Commissioner, or his agent, or a court gives written permission to sell, relocate, use or dispose of the lot of liming material or portion thereof.

"Ton" means a net weight of 2,000 pounds avoirdupois.

"Type" means the identification of the agricultural liming material as follows:

1. "Burnt" means any agricultural liming material with calcium and magnesium compounds capable of neutralizing soil acidity, and that consists essentially of calcium oxide, or a combination of calcium oxide and magnesium oxide.

2. "Calcitic" means any agricultural liming material in which eighty-five percent or more of the total neutralizing value, expressed as calcium carbonate equivalent, is derived from calcium.

3. "Dolomitic" means any agricultural liming material in which fifteen percent or more of the total carbonate content is magnesium carbonate.

4. "Hydrated" means any agricultural liming material, made from burnt lime, which consists essentially of: (i) calcium hydroxide; (ii) a combination of calcium hydroxide, magnesium oxide and magnesium hydroxide; or (iii) a combination of calcium hydroxide, and either magnesium oxide or magnesium hydroxide.

5. "Marl" means a granular or loosely consolidated earthy agricultural liming material composed largely of calcium carbonate.

§ 3.1-126.4. Registration, permitting, and licensing.

A. Any distributor of agricultural liming material in the Commonwealth shall register by July 1 of each year for the registration year of July 1 to June 30 each brand of agricultural liming material before

distributing any agricultural liming material in the Commonwealth. Each distributor shall submit an application for registration to the Commissioner on forms furnished or approved by the Commissioner and shall pay to the Commissioner a registration fee of fifty dollars per brand of agricultural liming material per registration year. Upon approval by the Commissioner, the Commissioner or his agent shall furnish a copy of the registration to the applicant. Each registration shall expire on June 30 of the registration year for which the Commissioner or his agent issued the registration. Every such registration shall be valid through July 31 of the next registration year or until issuance of the renewal registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner or his agent issued the registration; however, any registration the Commissioner or his agent issued on or after January 1, 1994, and on or before July 1, 1994, shall be issued to expire on June 30, 1995.

B. Any distributor of any brand of industrial co-product used to neutralize soil acid in the Commonwealth shall register by July 1 of each year for the registration year of July 1 to June 30 each brand of industrial co-product used to neutralize soil acid before distributing any industrial co-product used to neutralize soil acid in the Commonwealth. Each distributor shall submit an application for registration to the Commissioner on forms furnished or approved by the Commissioner and shall pay to the Commissioner a registration fee of \$100 per brand of industrial co-product used to neutralize soil acid per registration year. Upon approval by the Commissioner, the Commissioner or his agent shall furnish a copy of the registration to the applicant. Each registration shall expire on June 30 of the registration year for which the Commissioner or his agent issued the registration. Every such registration shall be valid through July 31 of the next registration year or until issuance of the renewal registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner or his agent issued the registration; however, any registration the Commissioner or his agent issued on or after January 1, 1994, and on or before June 30, 1994, shall expire on June 30, 1995.

Any distributor making application to register any brand of industrial co-product used to neutralize soil acid shall submit to the Commissioner test data indicating the product's neutralizing value, and its safety to plants and animals.

C. If the Commissioner or his agent identifies any unregistered liming material in commerce in the Commonwealth during the registration year, the Commissioner or his agent shall grant a grace period of fifteen working days from issuance of notification to the distributor of the liming material within which to register the liming material without penalty. Any distributor who fails to register each brand of liming material being distributed by him in the Commonwealth by the fifteenth day of the grace period, shall pay to the Commissioner a fifty dollar late fee per brand of liming material in addition to the registration fee, as well as cause a stop sale, use, removal or seizure order to be issued upon said liming material until its registration is complete.

D. A distributor shall not be required to register any brand of liming material or liming material with added potash, if it has been duly registered under this chapter by another person, provided the label on the liming material the other person registered does not differ in any respect from the label on the liming material the distributor seeks to register.

E. Each person who manufactures or whose name appears on the label of any liming material to be distributed in the Commonwealth shall by July 1 of each year, or prior to distribution of such liming material, obtain a license for the licensing year of July 1 to June 30. Each person shall make application on forms furnished or approved by the Commissioner and shall pay a license fee of fifty dollars per licensing year per distributor. Each license shall expire on June 30 of the license year for which the Commissioner or his agent issued the license. Every such license shall be valid through July 31 of the next licensing year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the licensing year for which the Commissioner or his agent issued the license.

F. The Commissioner or his agent shall grant a grace period of fifteen working days from issuance of notification, within which to obtain a license without penalty, to any person who fails to obtain a license during the licensing year as required by subsection E. Any person who fails to obtain a license by the fifteenth day of the grace period shall pay to the Commissioner a fifty dollar late fee in addition to the license fee, as well as cause a stop sale, use, removal or seizure order to be issued on any liming material the person distributes until the person obtains the required license.

G. ~~Any person desiring to become a contractor as defined in this chapter shall make application to the Commissioner by July 1 of each year for the permitting year July 1 to June 30 on forms furnished or approved by the Commissioner for a permit to do business in the Commonwealth and obtain said permit before engaging in such business. No person, other than a registrant or licensee, may sell bulk liming material to the consumer unless (i) the person completes a contractor application form furnished or approved by the Commissioner, pays the fifty-dollar annual fee required to be a contractor, and holds a permit from the Commissioner to be a contractor; (ii) the person is an employee or agent of a contractor who holds a valid permit, in which case no permit is required and no fee is due from such employee or agent; or (iii) the person holds a valid permit to be a contractor-applicator pursuant to~~

subsection M of § 3.1-106.6, or is an employee or agent of a person holding a valid permit to be a contractor-applicator pursuant to subsection M of § 3.1-106.6, in which case no additional permit is required and no additional fee is due. Each applicant shall pay a permit fee to the Commissioner of fifty dollars per permitting year unless a permit has been obtained under the Virginia Fertilizer Act (§ 3.1-106.1 et seq.). The contractor shall guarantee compliance with all provisions of this chapter which apply to the sale and delivery of bulk liming material. Upon approval by the Commissioner, the Commissioner or his agent shall furnish a copy of the permit to the contractor and shall authorize the person receiving the permit to do business. Each permit to do business as a contractor shall expire on June 30 of the permitting year for which the Commissioner or his agent issued the permit. Every such permit shall be valid through July 31 of the next permitting year or until issuance of the renewal permit, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the permitting year for which the Commissioner or his agent issued the permit.

H. The Commissioner or his agent shall grant *to a contractor who fails to obtain a contractor's permit to do business during the permitting year* a grace period of fifteen working days ~~from~~, *starting upon* issuance of notification, ~~to any person who fails to obtain a contractor's permit to do business during the permitting year as required by subsection G within which to obtain the permit without penalty a late fee. Any person who~~ *If the contractor fails to obtain a contractor's permit by the fifteenth day of the grace period, the contractor shall pay to the Commissioner a fifty dollar late fee in addition to the permit fee, and the Commissioner shall as well as cause a stop sale, use, removal or seizure order to be issued on any liming material the person contractor sells until the person contractor obtains the required permit.*