

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Maine Commercial Fertilizer Law

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §742, sub-§1 is repealed.

Sec. 2. 7 MRSA §742, sub-§9, is amended to read:

9. Guaranteed analysis. "Guaranteed analysis":

A. "Guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total Nitrogen (N) per cent

Available Phosphoric Acid (P₂O₅)..... per cent

Soluble Potash (K₂O) per cent; and

Magnesium (mg) per cent

B. "Guaranteed analysis" in paragraph A includes:

(1) For unacidulated mineral phosphatic materials and basic slag, both total and available phosphorus or phosphoric acid and the degree of fineness. For bone, tankage and other organic phosphatic materials, total phosphorus or phosphoric acid; and

(2) Additional plant nutrients expressed as the elements, when permitted by the commissioner.

(3) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton, when permitted by regulation.

(4) For agricultural lime the minimum percentages of total calcium and total magnesium, and for gypsum the minimum percentage of calcium and sulfur.

Sec. 3. 7 MRSA §744 is amended to read:

§ 744. Labeling

Any commercial fertilizer distributed in this State in containers ~~shall~~must have placed on or affixed to the container a label setting forth in clearly legible form the information required by section 743, subsections 1 to ~~4~~5.

If distributed in bulk, a written or printed statement of the information required by section 743, subsections 1 to ~~4~~5, ~~shall~~must accompany delivery and be supplied to the purchaser at time of delivery.

Sec. 4. 7 MRSA §745, as amended by PL 2005, c. 512, §42, is further amended to read:

§ 745. Inspection, sampling and analysis

The commissioner shall inspect and sample for analysis in accordance with section 490 commercial fertilizers distributed within this State to the extent as the commissioner ~~deems~~considers necessary to determine compliance with this subchapter. The commissioner is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers, subject to this subchapter and the rules adopted pursuant to section 748.

The methods of sampling, sample preparation and analysis are those adopted from sources such as ~~the Journal of the Association of Official Agricultural Chemists~~AOAC International. The commissioner, in determining for administrative purposes whether a commercial fertilizer is deficient in any component, is guided solely by the official sample as defined and obtained and analyzed as provided for in this section.

When the inspection and analysis of an official sample indicate a commercial fertilizer has been adulterated or misbranded, the commissioner shall forward the results of the analysis to the distributor or manufacturer. Upon request within 30 days, the commissioner shall furnish to the registrant a portion of the sample concerned.

Sec. 5. 7 MRSA §747, sub-§3 is amended to read:

3. Other materials. If it is found to contain any pulverized leather, hair, ground hoofs, horns, wool waste, peat, garbage tankage or any nitrogenous ingredients derived from any inert material ~~whatsoever~~, unless the same has been so treated as to be available as plant food as determined by the methods adopted by ~~the Association of Official Agricultural Chemists~~AOAC International, without an explicit printed statement of fact, conspicuously affixed to the package of ~~such~~the fertilizer and accompanying and going with every lot or package of the same, in which fertilizer the ~~above-named~~ materials named in this subsection aid in making up the required or guaranteed analysis.

Sec. 6. 7 MRSA §750, sub-§2, as enacted by PL 2003, c. 452, Pt. B, §11 and affected by Pt. X, §2, is amended to read:

2. Penalty. The following penalties apply to violations of this section.

A. A person who violates subsection 1 commits a civil violation for which a fine of not more than ~~\$100~~\$500 may be adjudged.

B. A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not more than ~~\$200~~\$1,000 may be adjudged.

C. For a deficiency in total nitrogen, available phosphate and soluble potash, in addition to any fine under paragraph A or B, a penalty payment of 2 times the value of the deficiency or deficiencies must be assessed:

(1) If the analysis shows that a fertilizer is deficient in one or more of its guaranteed primary plant nutrients beyond the investigational allowances as established by rule; or

(2) If the overall index value of the fertilizer is below the level established by rule.

When a fertilizer is subject to a penalty payment under both subparagraphs (1) and (2), the larger penalty payment applies.

D. In addition to any fine under paragraph A or B, penalty payments for deficiencies beyond the investigational allowances as established by rule, other than those set forth in paragraph C, that the registrant is required to or may guarantee must be evaluated and prescribed by the commissioner.

All penalty payments assessed under paragraphs C and D must be paid by the registrant to the consumer of the lot of fertilizer represented by the sample analyzed. Payments must be made within 30 days after the date of notice from the commissioner to the registrant. If the consumer cannot be found, the amount of the penalty payments is paid to the commissioner, who shall deposit the same in the appropriate state fund allocated for fertilizer.

For the purpose of determining the commercial value of fertilizer, the commissioner shall use the amount originally invoiced to the consumer per unit of nitrogen, available phosphate, soluble potash or other micronutrients that the registrant is required to or may guarantee. The values derived from the invoice must be used in determining and assessing penalty payments.

Rules adopted pursuant to paragraphs C and D are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill amends the Maine Commercial Fertilizer Law to conform to national standards, increases the civil penalties for civil violations and creates a system of restitution for payments to growers who do not receive the correct fertilizer formulation.