

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 216
SENATE BILL 550

AN ACT TO AMEND THE NORTH CAROLINA COMMERCIAL FERTILIZER
LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-666 reads as rewritten:

"§ 106-666. 'Stop sale,' etc., orders.

(a) ~~It shall be the duty of the Commissioner to~~ When the Commissioner finds that a lot of commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Article, the Commissioner shall issue and enforce a written or printed 'stop sale, use, or removal' order to the owner or custodian of any lot of commercial fertilizer and to hold shall cause the fertilizer to be held at a designated place when the Commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this Article until (i) the law has been complied with and said the commercial fertilizer is released in writing by the Commissioner or said (ii) the violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

(b) If any manufacturer, dealer, or agent fails to pay a penalty owed on commercial fertilizer within 90 days after notice of assessment by the Commissioner, the Commissioner may issue and enforce a written or printed 'stop sale, use, or removal' order to that manufacturer, dealer, or agent and shall cause any commercial fertilizer distributed and offered by that manufacturer, dealer, or agent for sale in the State to be held until (i) the penalties are paid in full and the commercial fertilizer is released in writing by the Commissioner or (ii) the penalties have been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal."

Sec. 2. G.S. 106-673 reads as rewritten:

"§ 106-673. Authority of Board of Agriculture to make rules and regulations.

Because legislation with regard to commercial fertilizer sold or offered for sale in this State must be ~~adopted~~ adapted to complex conditions and standards involving numerous details with which the General Assembly cannot deal directly and in order to effectuate the purposes and policies of this Article, and in order to insure the

manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer sold or offered for sale in this State, the Board of Agriculture shall have the authority to make rules and regulations with respect to to:

- (1) The maximum chlorine guarantee permitted for tobacco fertilizer;
- (2) The maximum chlorine guarantee permitted in tobacco top dressers;
- (3) Which grades of fertilizer may be branded top dressers;
- (4) The labeling of the grade of fertilizer when such fertilizer is sold in plain or unbranded bags;
- (5) The labeling requirements for all containers of liquid commercial fertilizer for direct application to the soil;
- (6) The bag sizes which may be used in the sale of commercial fertilizer;
- (7) The labeling requirements for packages containing a combination of any nonfertilizer material and mixed tobacco fertilizer;
- (8) Registration and labeling requirements for grades and brands of fertilizer carrying any guarantee of boron; the tolerance allowances for the percentage of boron in fertilizer mixtures;
- (9) The required composition for boron-landplaster mixtures before they may be registered and sold for use on peanuts in this State; the labeling requirements for each container of such mixture;
- (10) The monetary penalties assessed for excesses or deficiencies of boron and all other minor elements above or below the tolerances allowed;
- (11) The registration and labeling of general crop grades and tobacco grades;
- (12) The method, and the time limitations for the reporting to the Commissioner of Agriculture of the tonnage of each grade of fertilizer shipped to each destination in the State by each manufacturer or firm having fertilizer registered in this State;
- (13) The required composition, before such mixtures may be registered and sold in this State, of fertilizer-pesticide, landplaster-pesticide, and fertilizer-landplaster-pesticide, when to be used for peanuts alone;
- (14) The labeling and bag requirements of fertilizer-landplaster-pesticide mixtures;
- (15) The standards and requirements which must be met before fertilizer-pesticide mixtures may be registered in this State. These requirements may include, but are not limited to, approval in North Carolina of both the pesticide and the fertilizer grades, approval of the mixture by the Board of Agriculture, and any labeling requirements;
- (16) The standards and requirements which must be complied with before fertilizers-pesticides may, without registering the mixture, be mixed for direct application at the farmer's request;
- (17) Requests for mixing any pesticide with fertilizer, for products not previously approved by the Board of Agriculture;

- (18) Packaging requirements for fertilizer-pesticide mixtures sold either in bulk or in bags, such that dusting, spillage, sifting, or a loss of any fertilizer-pesticide mixture will not occur;
- (19) The percentages of nitrogen required to be in nitrogen solutions, before such solutions may be registered and sold in this State;
- (20) The labeling of fertilizer products to ascertain their compliance to the Fertilizer or Lime and Landplaster Law;
- (21) Requesting substantiating data to back up claims made about a fertilizer product; registration may be denied if such data is not furnished;
- (22) The denial of approval of the registration of fertilizer products when such products will not, when used as directed, supply deficient needs of a plant;
- (23) Safety requirements for the movement, handling and storage of fluid fertilizers;
- (24) Standards and requirements for equipment and tanks for handling liquid fertilizer;
- (25) Refusing registration as a result of information or recommendations from the director of research stations;
- (26) Establishing minimum guarantees permissible for registering secondary elements and micronutrients; ~~and~~
- (27) Establishing minimum standards for containment of fertilizer materials in storage to prevent contamination of groundwater and surface ~~water.~~
water; and
- (28) Standards and labeling requirements for specialty fertilizers."

Sec. 3. G.S. 106-657 reads as rewritten:

"§ 106-657. Definitions.

When used in this Article:

- (1) The term 'brand name' means the name under which any individual mixed fertilizer or fertilizer material is offered for sale, and may include a trademark, but shall not include any numeral other than the grade of the fertilizer.
- (2) The term 'bulk fertilizer' means a commercial fertilizer distributed in non-package form.
- (3) The term 'commercial fertilizer' includes both fluid and dry mixed fertilizer and/or fertilizer materials.
- (4) The term 'contractor' means any person, firm, corporation, wholesaler, retailer, distributor or any other person, who for hire or reward applies commercial fertilizer to the soil or crop of a consumer; provided, that this shall not apply to any consumer applying commercial fertilizer to only the land or crop that he owns or to which he otherwise holds rights, for the production of his own crops.
- (5) The term 'distributor' means any person who offers for sale, sells, barter, or otherwise supplies mixed fertilizer or fertilizer materials.

- (6) The term 'fertilizer material' means any substance containing either nitrogen, phosphorus, potassium, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.
- (7) The term 'fluid fertilizer' means a nonsolid commercial fertilizer.
- (8) The term 'fortified mulch' means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In 'fortified mulches' the minimum percentages of total nitrogen, available ~~phosphoric acid~~, phosphate and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter (.25) percentages; provided, however, that such percentages shall not exceed one percent (1%), respectively, subject to the same limits and tolerances set forth in this Chapter.

- (9) The term 'grade' means the percentage of total nitrogen, available ~~phosphoric acid~~ phosphate (as ~~P₂O₅~~) and soluble potash (as ~~K₂O~~) only stated in the order given in this subdivision, and, when applied to mixed fertilizers, shall be in whole numbers only for all packages larger than 16 ounces.
- (10) The term 'manipulated manures' means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, artificially drying, grinding and other means.

In 'manipulated manures' the minimum percentages of total nitrogen, available ~~phosphoric acid~~ phosphate (as ~~P₂O₅~~) and soluble potash (as ~~K₂O~~) are to be guaranteed, and the guarantee stated in multiples of half (.50) percentages. Additions of plant food shall be limited to one-half (.50) percent each of nitrogen, phosphorus and potash.

- (11) The term 'manufacturer' means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers or the person whose name appears on the label as being responsible for the guarantee. The term 'manufacture' means preparing, mixing, or combining fertilizer materials chemically or physically, including the simultaneous application of two or more fertilizer materials, by a manufacturer or contract applicator.
- (12) The term 'mixed fertilizers' means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in, or claimed to have value in promoting plant growth.

- (13) The term 'mulch' means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.
- (14) The term 'natural organic fertilizer' means material derived from either plant or animal products containing one or more elements (other than carbon, hydrogen and oxygen) which are essential for plant growth. These materials may be subjected to biological degradation processes under normal conditions of aging, rainfall, sun-curing, air drying, composting, rotting, enzymatic, or anaerobic/aerobic bacterial action, or any combination of these. These materials shall not be mixed with synthetic materials, or changed in any physical or chemical manner from their initial state except by physical manipulations such as drying, cooking, chopping, grinding, shredding or pelleting.
- (15) The term 'official sample' means any sample of commercial fertilizer taken by the Commissioner or his authorized agent according to the method prescribed in subsection (b) of G.S. 106-662.
- (16) The term 'organic fertilizer' means a material containing carbon and one or more elements other than hydrogen and oxygen essential for plant growth.
- (17) The term 'percent' or 'percentage' means the percentage by weight.
- (18) The term 'person' includes individuals, partnerships, associations, firms, agencies, and corporations, or other legal entity.
- (19) The term 'retailer' means any person who sells or delivers fertilizer to a consumer.
- (20) The term 'sale' means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditional or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any bailment, loan, lease, rental or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to the bailee, borrower, lessee, or licensee.
- (21) The term 'sell' means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.
- (22) The term 'specialty fertilizer' means any fertilizer distributed primarily for use on noncommercial crops such as gardens, lawns, shrubs, flowers, golf courses, cemeteries and nurseries.
- (23) The term 'ton' means a net ton of two thousand pounds avoirdupois.
- (24) The term 'unmanipulated manures' means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.
- (25) The term 'wholesaler' shall mean any person who sells to any other person for the purpose of resale, and who also may sell to a consumer.

- (26) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.
- (27) The term 'fertilizer coated seed' means seed which has been coated with commercial fertilizer."

Sec. 4. G.S. 106-659 reads as rewritten:

"§ 106-659. Minimum plant food content.

Superphosphate containing less than eighteen percent (18%) available ~~phosphoric acid, phosphate,~~ or any mixed fertilizer in which the guarantees for the nitrogen, available ~~phosphoric acid, phosphate,~~ or soluble potash are in fractional percentages ~~may not shall not~~ be offered for sale, sold, or distributed in this State; provided, however, packages of 16 fluid ounces or less when in liquid form, or 16 ounces or less avoirdupois when in a dry form, may be sold in fractional percentages, but such packages are not exempt from any other requirements of this Article."

Sec. 5. G.S. 106-664 reads as rewritten:

"§ 106-664. Determination and publication of commercial values.

For the purpose of determining the commercial values to be applied under the provisions of G.S. 106-665, the Commissioner shall determine and publish annually the values per pound of nitrogen, available ~~phosphoric acid, phosphate,~~ and soluble potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties."

Sec. 6. G.S. 106-665(b)(1) reads as rewritten:

- "(1) For total nitrogen, available ~~phosphoric acid, phosphate,~~ or available potash: A penalty of three times the value of the deficiency if ~~such the~~ deficiency is in excess of the following investigational allowances.

Guarantee Percentage	Total Nitrogen	Available Phosphoric Acid <u>Phosphate</u>	Soluable Potash Percentage
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27

28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

Provided that when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10% of the guarantee of the deficient nutrient, not to exceed two units. No compensation ~~will~~shall be allowed toward a deficiency if the overage does not compensate for the entire amount of the deficiency or if the deficiency exceeds 10% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in penalty status, no compensation ~~will~~shall be allowed."

Sec. 7. This act becomes effective December 1, 1993.

In the General Assembly read three times and ratified this the 28th day of June, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives