

SENATE BILL NO. 55
INTRODUCED BY D. STEINBEISSER
BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MONTANA FERTILIZER LAWS; PROHIBITING POLITICAL SUBDIVISIONS FROM REGULATING COMMERCIAL FERTILIZERS AND SOIL AMENDMENTS; REVISING DEFINITIONS; REVISING INSPECTION, ANALYSIS, APPLICATION, REGISTRATION, LICENSING, LABELING, ASSESSMENT, PENALTY, PUBLICATION, AND ENFORCEMENT PROVISIONS APPLICABLE TO FERTILIZERS; AND AMENDING SECTIONS 7-1-111, 75-10-701, 80-10-101, 80-10-102, 80-10-103, 80-10-201, 80-10-202, 80-10-204, 80-10-205, 80-10-206, 80-10-207, 80-10-208, 80-10-209, 80-10-303, AND 80-15-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Regulation of commercial fertilizers and soil amendments by political subdivision prohibited. ~~A (1) EXCEPT AS PROVIDED IN SUBSECTION (2),~~ A political subdivision may not regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments. A political subdivision may not adopt or continue in effect any local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments. Local legislation adopted or continued in violation of this section is void and unenforceable.

~~(2) (A) A POLITICAL SUBDIVISION MAY ENTER INTO A COOPERATIVE AGREEMENT WITH THE DEPARTMENT CONCERNING THE USE AND APPLICATION OF COMMERCIAL FERTILIZERS OR SOIL AMENDMENTS.~~

~~(B) NOTHING IN SUBSECTION (1) PREVENTS A POLITICAL SUBDIVISION FROM ADOPTING OR IMPLEMENTING ZONING REGULATIONS OR FIRE CODES GOVERNING THE PHYSICAL LOCATION OR SITING OF FERTILIZER MANUFACTURING, STORAGE, AND SALES FACILITIES.~~

Section 2. Section 7-1-111, MCA, is amended to read:

"7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) subject to [section 1], any power to regulate the registration, packaging, labeling, sale, storage,

distribution, use, or application of commercial fertilizers or soil amendments, EXCEPT THAT A LOCAL GOVERNMENT MAY ENTER INTO A COOPERATIVE AGREEMENT WITH THE DEPARTMENT OF AGRICULTURE CONCERNING THE USE AND APPLICATION OF COMMERCIAL FERTILIZERS OR SOIL AMENDMENTS. THIS SUBSECTION IS NOT INTENDED TO PREVENT OR RESTRICT A LOCAL GOVERNMENT FROM ADOPTING OR IMPLEMENTING ZONING REGULATIONS OR FIRE CODES GOVERNING THE PHYSICAL LOCATION OR SITING OF FERTILIZER MANUFACTURING, STORAGE, AND SALES FACILITIES."

Section 3. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Department" means the department of environmental quality provided for in 2-15-3501.
- (2) "Director" means the director of the department.
- (3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.
- (4) (a) "Facility" means:
 - (i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or
 - (ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.
- (b) The term does not include any consumer product in consumer use.
- (5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian, conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person. The term does not include:
 - (a) a person who has previously owned or operated the property in a nonfiduciary capacity; or
 - (b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part. For the purposes of 75-10-715(9), the term does not include the state, a state agency, or a political subdivision of the state acting as trustee of natural resources within the state of Montana.
- (6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan obligation.

(7) "Fund" means the environmental quality protection fund established in 75-10-704.

(8) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601(14), ~~as amended~~;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, ~~as amended~~;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), ~~as amended~~; including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or areas.

(10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived from a household.

(11) "Institutional control" means a restriction on the use of real property that mitigates the risk posed to public health, safety, and welfare and the environment. Institutional controls include but are not limited to:

(a) deed restrictions;

(b) easements;

(c) reservations;

(d) covenants, either restrictive or affirmative; and

(e) other mechanisms or physical restrictions for controlling present and future land use, including controlled ground water areas, that are placed upon real property to mitigate the risk to public health, safety, and welfare and the environment.

(12) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

(13) "Orphan share" means the percentage share of remedial action costs for a facility that is attributable, under the procedures in 75-10-742 through 75-10-751, to identified but bankrupt or defunct persons who are not

an affiliate of any viable person, unless affiliated by stock ownership.

(14) "Orphan share fund" means the fund for the orphan share account established in 75-10-743.

(15) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. ~~The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).~~ THE TERM ALSO DOES NOT INCLUDE THE OWNER OR OPERATOR OF THE MILLTOWN DAM LICENSED UNDER PART 1 OF THE FEDERAL POWER ACT (FERC LICENSE NO. 2543-004) IF A HAZARDOUS OR DELETERIOUS SUBSTANCE HAS BEEN RELEASED INTO THE ENVIRONMENT UPSTREAM OF THE DAM AND HAS SUBSEQUENTLY COME TO BE LOCATED IN THE RESERVOIR CREATED BY THE DAM UNLESS THE OWNER OR OPERATOR IS A PERSON WHO WOULD OTHERWISE BE LIABLE FOR A RELEASE OR THREATENED RELEASE UNDER 75-10-715(1).

(16) "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

(17) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction of the product or waste that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(18) "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

- (a) local land and resource use regulations, ordinances, restrictions, or covenants;
- (b) historical and anticipated uses of the facility;
- (c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

(19) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102~~(30)~~ when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in 80-10-101~~(2)~~, when applied as part of accepted agricultural practice.

(20) "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

(21) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

(22) "Remedial action contractor" means:

- (a) any person who enters into and is carrying out a remedial action contract; or
- (b) any person who is retained or hired by a person described in subsection (22)(a) to provide services relating to a remedial action.

(23) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

Section 4. Section 80-10-101, MCA, is amended to read:

"80-10-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of commercial fertilizer.

(2) "Blending" means the physical mixing or combining, including mixing through simultaneous or sequential application, of any combination of materials to produce a uniform mixture of:

- (a) one or more fertilizer materials with one or more filler materials; or
- (b) two or more fertilizer materials.

~~(2)(3)~~ (a) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients ~~which that~~ is used for its plant nutrient content and ~~which that~~ is designed for use or claimed to have value in promoting plant growth, yield, or quality of the crop.

(b) Commercial fertilizer includes the following types of fertilizer:

~~(a) "Bulk fertilizer" is a~~ (i) Bulk fertilizer is commercial fertilizer (dry or liquid) distributed in nonpackage form or in containers of greater than 1,000 pounds.

~~(b) "Fertilizer materials" is a~~ (ii) Fertilizer material is commercial fertilizer ~~which that~~ either:

~~(i)(A)~~ (i)(A) contains important quantities of not more than one of the primary plant nutrients (~~nitrogen, phosphoric acid, and potash~~);

~~(i)(B)~~ (i)(B) has ~~approximately 85% or more~~ of its plant nutrient content present in the form of a single chemical compound; or

~~(iii)(C)~~ (iii)(C) is derived from a plant or animal residue or byproduct or a natural material deposit ~~which that~~ has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

~~(c) "Mixed fertilizers" is a~~ (iii) Mixed fertilizer is commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

~~(d) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of 1,000 pounds or less.~~

~~(e) "Specialty fertilizer" is a~~ (iv) Specialty fertilizer is commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, ~~such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries~~ and includes commercial fertilizers used for research or experimental purposes.

(4) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet a specific consumer request prior to blending.

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

~~(3)(6)~~ (6) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers or soil amendments.

~~(4)(7)~~ (7) "Distributor" means any person who distributes.

~~(5)(8)~~ (8) "Grade" means the percentages of total nitrogen, available ~~phosphorus or phosphoric acid phosphate~~, and ~~soluble potassium or soluble potash~~ stated in whole numbers in the same terms, order, and

percentages as in the guaranteed analysis. Specialty fertilizers may be guaranteed in fractional units of less than 1% of total nitrogen, available phosphate, and soluble potash. ~~However, fertilizer~~ Fertilizer materials, bonemeal, manures, and similar ~~raw~~ materials may be guaranteed in fractional units.

(9) "Guaranteed analysis" means the minimum percentage of plant nutrients as described in 80-10-102.

(10) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer.

(11) "Label" means the display of all written, printed, or graphic matter on a container, or a statement accompanying a fertilizer or soil amendment.

(12) "Labeling" means all written, printed, or graphic matter on or accompanying any fertilizer or soil amendment and advertisements, brochures, websites, posters, and television and radio announcements used in promoting the sale of a fertilizer or soil amendment.

~~(6)(13)~~ "Licensee" means any person who has obtained a license from the department so he may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state a person licensed under 80-10-202.

(14) "Local legislation" means but is not limited to any ordinance, motion, resolution, amendment, regulation, or rule adopted by a political subdivision.

~~————(7) "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 nutrients, drying, grinding, and other means.~~

~~(8)(15)~~ "Manufacture" means the formulation, mixing, blending, or further processing of commercial fertilizers or soil amendments.

~~(9)(16)~~ "Manufacturer" is means a person who manufactures commercial fertilizer or soil amendments.

~~(10)(17)~~ "Official sample" means any sample of commercial fertilizer taken by the department and so designated as official by the department.

(18) "Other ingredients" means nonsoil amending ingredients present in soil amendments.

~~(11)(19)~~ "Percent or percentage" means the percentage by weight.

~~(12)(20)~~ "Person" means an individual, partnership, association, firm, or corporation.

(21) "Political subdivision" means any local government entity, including but not limited to any city, county, town, or municipal corporation and any other corporate or political body that is responsible for government activities in a geographic area smaller than the state.

(22) "Primary nutrient" means the total nitrogen (N), available phosphate (P₂O₅), and soluble potash

(K₂O).

(23) "Quarterly" means the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

~~(13)~~(24) "Registrant" means the person who registers a commercial fertilizer ~~and/or~~ or a soil amendment.

~~(14)~~(25) (a) "Soil amendment" means any ~~material not included under commercial fertilizer or those products subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop, soil flora or fauna, or other soil characteristics~~ substance that is intended to improve the physical or chemical characteristics of soil.

(b) The term does not include commercial fertilizers, unmanipulated animal or vegetable manures, pesticides, and other ingredients that are exempted from the definition by rule.

(26) "Supplier" means a person who distributes fertilizers or soil amendments into Montana.

~~(15)~~(27) "Ton" means a net weight of 2,000 pounds avoirdupois.

(28) "Unmanipulated animal or vegetable manures" means substances composed primarily of excreta, plant remains, or mixtures of those substances that have not been processed in any manner, including the addition of plant nutrients, drying, grinding, and other means."

Section 5. Section 80-10-102, MCA, is amended to read:

"80-10-102. Guaranteed analysis. (1) ~~Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means~~ Guaranteed analysis is the minimum percentage of plant nutrients claimed in the following order and form:

(a) The following plant nutrients ~~shall~~ must be guaranteed:

Total nitrogen (N)	%
Available phosphoric acid <u>phosphate</u> (P ₂ O ₅)	%
Soluble potash (K ₂ O)	%

(b) For unacidulated mineral phosphatic materials and basic slag, ~~bone~~meat bone, tankage, and other organic phosphatic materials, the total ~~phosphoric acid~~ phosphate and degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients ~~shall~~ must be expressed in the form of the element. The sources of other nutrients, including but not limited to oxides, salt, and chelates, may be required to be stated on the application for registration and may be included ~~as a parenthetical statement~~ on

the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accordance with the methods and regulations prescribed by the department.

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton ~~shall~~ must be guaranteed when required by regulation.

~~(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:~~

~~----- Total nitrogen (N) ----- %~~

~~----- Available phosphorus (P) ----- %~~

~~----- Soluble potassium (K) ----- %~~

~~(3) The effective date of the rule may not be less than 6 months following the adoption of the rule. For a period of 2 years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.~~

~~(4)(2) Soil amendments shall must guarantee the minimum quantity of each active soil amending ingredient and the total other ingredients in terms approved by the department or in terms as set forth in rules issued by the department. They shall Soil amendments must also meet any other requirements established by rule by the department rule."~~

Section 6. Section 80-10-103, MCA, is amended to read:

"80-10-103. Assessment to fund educational and experimental programs -- collection. Moneys Money to fund 80-10-104 through 80-10-106 must be produced by an assessment of 35 cents per ton of fertilizer sold within manufactured in or distributed into Montana. Collections ~~shall~~ must be made in accordance with procedures in 80-10-207 and ~~shall be collected from~~ payment is the responsibility of the in-state manufacturer or of the supplier if the fertilizer is not manufactured in Montana."

Section 7. Section 80-10-201, MCA, is amended to read:

"80-10-201. Registration. (1) ~~(a)~~ Each brand and grade of fertilizer and each soil amendment except unmanipulated animal ~~and or~~ vegetable manures must be registered by ~~or the manufacturer or the supplier~~ on behalf of the manufacturer before distribution in this state. The application for registration must be submitted to the department on a form ~~furnished or~~ approved by the department and must be accompanied by:

~~(i)~~ a nonrefundable fee of \$20 per grade for each fertilizer and for each soil amendment ~~with exception of specialty fertilizers, which must be registered at;~~

~~(ii)~~ a nonrefundable fee of \$35 ~~for each specialty fertilizer; and~~

~~(iii)~~ a fee of \$10 for each commercial and specialty fertilizer to be used for ground water protection, as required in 80-15-302(3).

~~(b)~~ Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration must include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) the net weight for packaged products;

~~(v)~~(vi) a an electronic copy or facsimile of each label and of promotional material labeling when requested by the department; and

~~(vi)~~(vii) analytical information on nutrient ingredients and nonnutrient ingredients as required by rule.

(b) The department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or ~~his~~ the director's designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product that is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor ~~may or licensee is not be~~ required to register any brand ~~or and~~ grade of commercial fertilizer that is already registered under this section by another person.

(4) Registration is not required for custom blends resulting from blending of registered products.

~~(4)~~(5) A manufacturer or supplier may not reregister register a product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department for each product."

Section 8. Section 80-10-202, MCA, is amended to read:

"80-10-202. License required. ~~No~~ A person ~~shall~~ may not distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures or specialty fertilizer, until a license to distribute has been obtained from the department for each facility distributing into this state and for each handling facility in this state. All new applicants or those failing to renew their licenses by January 1 of each year shall pay a nonrefundable \$75 fee for each license. ~~The department may exempt, by rule, manufacturers.~~ All licenses expire on December 31 of each year and are subject to the following:

(1) The application for license ~~shall~~ must be on forms ~~provided~~ approved by the department.

~~(2) The licensee is not required to register a grade of fertilizer registered by the manufacturer or blended to grade from registered products by the licensee.~~

~~(2)~~ License renewals received by the department prior to January 1 of each year must be accompanied by a fee of \$50 for each license.

(3) Before distributing any commercial fertilizer or soil amendment into the state, a person must be licensed as a supplier."

Section 9. Section 80-10-204, MCA, is amended to read:

"80-10-204. Labeling. (1) ~~Any~~ All commercial fertilizer distributed in this state in ~~packages~~ shall ~~containers~~ must have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form the following information:

(a) ~~the~~ net weight;

(b) ~~the~~ name and address of the ~~manufacturer~~ registrant or ~~distributor~~ guaranteeing the analysis guarantor;

(c) ~~the~~ brand ~~and~~ product name;

(d) ~~the~~ grade, except if no primary nutrients are claimed;

(e) ~~the~~ guaranteed analysis;

(f) directions for use of the fertilizer by the end user; and

~~(f)~~(g) other requirements as established by rule.

(2) Any bin in the state in which commercial fertilizer is stored for distribution must have affixed to or printed on it a label setting forth in clearly legible and conspicuous form:

(a) the guaranteed analysis of the product in the bin; and

(b) other requirements established by rule.

(3) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, ~~shall~~ must be accompanied by a clearly legible document ~~which shall~~ that must be supplied to the purchaser at the time of delivery ~~and at the time his invoice is delivered~~. The document ~~shall~~ must show:

- (a) net weight;
- (b) name and address of the distributor ~~or manufacturer guaranteeing the analysis, registrant, or guarantor;~~
- (c) guaranteed analysis or, on ~~blended~~ custom-blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and
- (d) other requirements as established by rule.

(4) (a) When distributed in containers, soil amendments ~~shall~~ must have a label affixed to ~~or printed on~~ the container. ~~When delivered in bulk the label shall be clearly legible and shall accompany the delivery of the product. This label shall be supplied to the purchaser at the time of delivery and at the time of invoicing. The label shall contain~~ setting forth in clearly legible and conspicuous form the following information:

- ~~(a)~~(i) net weight;
 - ~~(b)~~(ii) name and address of the registrant or licensee ~~who is responsible for the product~~ guarantor;
 - ~~(c)~~(iii) brand and product name;
 - ~~(d)~~(iv) guaranteed analysis;
 - (v) soil amending ingredients listed in the following form:
- | | |
|---|----|
| <u>Name of ingredient (identify and list all)</u> | % |
| <u>Total other ingredients</u> | %; |
- (vi) purpose of the product; and
 - ~~(e)~~(vii) other requirements, such as particle size, as established by rule.

(b) In the case of bulk shipments of soil amendments, the information required in subsection (4)(a) must be in clearly legible written or printed form, must accompany delivery, and must be supplied to the purchaser at the time of delivery."

Section 10. Section 80-10-205, MCA, is amended to read:

"80-10-205. Misbranding and adulteration prohibited. (1) ~~No~~ A person ~~shall~~ may not distribute a misbranded ~~or adulterated~~ fertilizer or soil amendment. A commercial fertilizer or soil amendment is misbranded if it:

- ~~(1)~~(a) ~~carries any its labeling is false or misleading statement upon or attached to the container or if false~~

~~or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the product in any manner;~~

~~(2)(b) it is distributed under the name of another fertilizer or soil amendment product;~~

~~(3)(c) it is not labeled as required in 80-10-204 and in accordance with rules prescribed under this chapter;~~

~~(d) 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; or~~

~~(4)(e) it purports to be or is represented as a commercial fertilizer or soil amendment or is represented as containing a plant nutrient, or commercial fertilizer, or soil amendment ingredient unless that plant nutrient, or commercial fertilizer, or soil amendment conforms to the definition of identity, if any, prescribed by rule of the department. In adopting this type of rule, the department shall give ~~due regard~~ consideration to commonly accepted definitions and official fertilizer and soil amendment terms as issued by the association of American plant food control officials.~~

~~(2) A person may not distribute an adulterated fertilizer or soil amendment product. A fertilizer or soil amendment is adulterated if:~~

~~(a) it 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;~~

~~(b) its composition falls below or differs from that which it is purported to possess by its labeling; or~~

~~(c) it contains crop seed or weed seed. "~~

Section 11. Section 80-10-206, MCA, is amended to read:

"80-10-206. Inspection, sampling, and analysis. (1) The department, ~~in cooperation with the agricultural experiment station of Montana state university-Bozeman, shall~~ may sample, inspect, analyze, and test commercial fertilizers and soil amendments distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers or soil amendments are in compliance with this chapter. The department may enter ~~upon~~ any public or private premises during regular business hours in order to have access to commercial fertilizers or soil amendments subject to this chapter.

(2) The methods of analysis and sampling ~~shall~~ must be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, ~~shall~~ must be transmitted promptly to the manufacturer and to

the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any deficiency occurred in a commercial fertilizer ~~is deficient in plant food or soil amendment is deficient~~, shall must be guided solely by the official sample obtained and analyzed as provided for in subsections (1) and (2) ~~of this section~~. The department may arrange with other laboratories for specific analyses conducted as part of an official analysis.

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer or soil amendment is found to be subject to penalty or other legal action, the department shall forward to the ~~registrant~~ responsible party notification of the violation ~~at least 10 days before its report is made public~~. If during that period no adequate evidence to the contrary is made available to the department, the report becomes official.

(5) Upon request, the department shall furnish to the ~~registrant~~ responsible party a portion of any sample found subject to penalty or other legal action. The responsible party may challenge the department's determination of a violation within 30 days following the responsible party's receipt of the analysis. Upon receipt of the challenge, the department shall forward a portion of the remainder of the official sample to any recognized chemical laboratory of the responsible party's choice for analysis. If the results differ significantly from the department's analysis, the responsible party may request a referee analysis by a referee laboratory chosen by the department. Results of the referee analysis must be reported to the responsible party and to the department, and the referee analysis is considered official. If the department's initial analysis is sustained following a referee analysis, the responsible party that requested the referee analysis shall pay the costs of the referee analysis."

Section 12. Section 80-10-207, MCA, is amended to read:

"80-10-207. Fees. (1) (a) ~~A manufacturer registering under 80-10-201(1)~~ Each in-state manufacturer or out-of-state supplier shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal ~~and or~~ vegetable manures, ~~provided that sales~~. Sales to manufacturers or exchanges between them manufacturers are exempt. The fees are as follows:

(i) ~~for inspection of fertilizers other than anhydrous ammonia, 20 cents per ton~~. The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 20 cents per ton or more than 25 cents per ton. A change in fee becomes effective on the first day of a reporting period. All in-state manufacturers and out-of-state suppliers of nonexempt products must be given notice of a change in fees before the effective date.

(ii) ~~for inspection of anhydrous ammonia, 65 cents per ton~~. The department may by rule adjust the anhydrous ammonia inspection fee to maintain adequate funding for the administration and enforcement of part

5 of this chapter. The fee may not be less than 65 cents per ton or more than \$1.30 per ton. A change in fee becomes effective on the first day of a reporting period. All ~~registrants and~~ in-state manufacturers and out-of-state suppliers of anhydrous ammonia must be given notice of a change in fees before the effective date of the fee adjustment.

(iii) ~~for assessment, the fee prescribed in 80-10-103.~~ The assessment fee prescribed in 80-10-103 must be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer material or soil amendment ~~material~~ is added to fertilizer for which a fee has been paid under subsection (1)(a), ~~a fee must be paid under that subsection, but only on the added fertilizer or soil amendment~~ a fee is due only on the fertilizer material or soil amendment for which a fee has not been paid.

(2) There must be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of a registered soil amendment is sold in a ~~6-month~~ quarterly reporting period, ~~there must be paid to the department a fee of \$5 for each soil amendment for each 6-month period in lieu of the fee of 10 cents per ton. Inspection fees must be used by the department for administration of this part~~ no payment is due.

(3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated animal or vegetable manures, to an unlicensed ~~or unregistered~~ person in this state shall file with the department on forms ~~furnished or~~ approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer ~~or~~ and soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period. There are no fees associated with the semiannual report.

(ii) Each in-state manufacturer ~~who registers or a person who registers on the manufacturer's behalf~~ and out-of-state supplier who distributes a soil amendment or commercial fertilizer in this state to a person regardless of their license status, except specialty fertilizer and unmanipulated animal or vegetable manures, shall file with the department on forms ~~furnished or~~ approved by the department a ~~monthly~~ quarterly statement setting forth the number of net tons of each ~~registered~~ commercial fertilizer and soil amendment distributed in this state during the ~~month~~ quarter and to whom it was distributed. The report is due on or before ~~the 30th day of the following month~~ 30 days after the end of the quarterly reporting period. The in-state manufacturer or ~~person registering on behalf of the manufacturer~~ out-of-state supplier shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report required by subsection (3)(a)(ii) is not filed and the payment of fees is not made

within 30 days after the end of the quarterly reporting period, a collection fee ~~amounting to 10%~~ of 15% annual percentage rate on the amount due but not less than \$10 must be assessed against the in-state manufacturer or out-of-state supplier, and the amount of fees due constitutes a debt and becomes the basis of a judgment against the in-state manufacturer or out-of-state supplier.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and money collected as penalties must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii) pursuant to the provisions of 17-6-201. The income from the investment must be deposited in the anhydrous ammonia account in the state special revenue fund."

Section 13. Section 80-10-208, MCA, is amended to read:

"80-10-208. Penalties. (1) A penalty of two times the commercial value of the deficiency, as determined by the ~~dealer's or manufacturer's price on the date of sampling of the deficiency or deficiencies, shall~~ retail price based on a semiannual state survey, may be assessed:

(a) if the analysis shows that a commercial fertilizer is deficient in one or more of its guaranteed primary ~~plant foods (NPK) nutrients~~ nutrients beyond the investigational allowance as established by regulation; or

(b) if the overall index value of the fertilizer is below the level established by regulation.

(2) When a commercial fertilizer is subject to a penalty under both subsections (1)(a) and (1)(b), the larger penalty applies.

(3) Deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under ~~subsections (1)(b), (1)(c), and (1)(d) of 80-10-102 which~~ 80-10-102(1)(b), (1)(c), and (1)(d) that the registrant is required to or may guarantee ~~shall~~ may be evaluated, and penalties ~~shall~~ may be assessed at two times the commercial value of the deficiency as determined by the ~~dealer's retail price on the date of sampling~~ based on a semiannual state survey.

(4) Nothing contained in this section ~~shall prevent~~ prevents any person from appealing the department's

decision to a court of competent jurisdiction.

(5) All penalties assessed under this section ~~shall~~ must be paid to the consumer of the lot, not to exceed 100 tons, of commercial fertilizer represented by the sample analyzed within 3 months after the date of notice from the department to the ~~registrant or licensee~~ responsible party. If at the end of the 3-month period the consumer cannot be found, receipts ~~shall~~ must be taken and promptly forwarded to the department for deposit in the state special revenue fund as provided in 80-10-207.

(6) If the department cannot reasonably determine the lot size, then the lot size is considered to be 2 tons for the purposes of calculating the commercial value of the deficiency.

(7) A deficiency in an official sample of mixed fertilizer that results from nonuniformity is not distinguishable from a deficiency to actual plant nutrient shortage and is subject to official action."

Section 14. Section 80-10-209, MCA, is amended to read:

"80-10-209. Publications. The department ~~shall~~ may publish ~~at least annually~~ by electronic or other means annual information concerning the sales of commercial fertilizers and soil amendments, together with data on their production and use as it considers advisable, and ~~shall~~ may report the results of the analyses based on official samples of commercial fertilizers and soil amendments sold in this state."

Section 15. Section 80-10-303, MCA, is amended to read:

"80-10-303. Violations -- enforcement proceedings -- judicial review. (1) If it appears from the examination of any commercial fertilizer or from the inspection of any anhydrous ammonia facility that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, licensee, distributor, or possessor from whom the sample was taken. A person notified ~~shall~~ must be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter or who obstructs, prevents, or attempts to prevent the department from performing its duty ~~under this chapter is guilty of a misdemeanor and shall~~ may be fined not less than \$300 or more than \$500 for the first violation and not less than \$300 or more than \$1,000 for a subsequent violation. In all ~~prosecutions~~ actions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction ~~shall~~ must be issued without bond.

(6) If an in-state manufacturer or supplier fails to pay a fee required under 80-10-207, the manufacturer or supplier may be fined an amount up to \$1,000 or twice the fee that should have been paid, whichever is higher. If a supplier fails to obtain a license as required in 80-10-202(3), the supplier may be assessed a civil penalty of \$500 for each quarter that the supplier fails to be licensed, in addition to any other amounts owed to the state.

~~(6)(7)~~ If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine ~~his~~ the person's rights, ~~he~~ the person may within 45 days sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred; for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable."

Section 16. Section 80-15-302, MCA, is amended to read:

"80-15-302. Special funding. (1) A fee of \$95 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited \$15,000 for purposes of administering or assisting the department in administering this chapter:

- (i) department of environmental quality; and
- (ii) Montana state university-Bozeman extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of \$10 is assessed for the registration of fertilizers in addition to the ~~fee~~ fees imposed by

80-10-201(1)(a)(i) and (1)(a)(ii). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department."

NEW SECTION. Section 17. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 80, chapter 10, part 1, and the provisions of Title 80, chapter 10, part 1, apply to [section 1].

NEW SECTION. SECTION 18. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2009.

- END -