

ARTICLE 11
Fertilizers

Section

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76-11-1. Short title.

Article 11 of Chapter 76, NMSA 1978 may be cited as the "New Mexico Fertilizer Act."

History: 1953 Comp., § 45-13-11, enacted by Laws 1963, ch. 184, § 1; 1975, ch. 181, § 1.

76-11-2. Administration of act.

The New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] shall be administered by the board of regents of the New Mexico state university through the New Mexico department of agriculture.

History: 1953 Comp., § 45-13-12, enacted by Laws 1963, ch. 184, § 2; 1975, ch. 181, § 2.

76-11-3. Definitions.

As used in the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978]:

- A. "board" means the board of regents of the New Mexico state university;
- B. "department" means the New Mexico department of agriculture;

C. "commercial fertilizer" means any substance which contains one or more recognized plant nutrients and which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth (except unmanipulated animal and vegetable manures, marl limes, limestone, wood ashes, gypsum and other products exempt by regulation of the board);

D. "fertilizer material" means a commercial fertilizer which either:

(1) contains important quantities of no more than one of the primary plant nutrients: nitrogen, phosphoric acid and potash; or

(2) has approximately eighty-five percent of its plant nutrient content present in the form of a single chemical compound; or

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

E. "specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes;

F. "bulk fertilizers" means commercial fertilizers distributed in a nonpackaged form;

G. "brand" means a term, design or trademark under which one or more commercial fertilizers or soil conditioners are distributed in New Mexico;

H. "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the order and form as prescribed by the board;

I. "grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis; provided, however, that fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units;

J. "official sample" means any sample of commercial fertilizer or soil conditioner taken by the department, unless designated otherwise;

K. "ton" means a net weight of two thousand pounds avoirdupois;

L. "percent" or "percentage" means the percentage by weight;

M. "person" includes individual, partnership, association, firm and corporation;

N. "distributor" means any person who imports, consigns, manufactures, produces, compounds, mixes or blends commercial fertilizer or soil conditioner, or who offers for sale, sells, barter or otherwise supplies commercial fertilizer or soil conditioner in this state;

O. "registrant" means the person who registers a commercial fertilizer or soil conditioner under the provisions of the New Mexico Fertilizer Act;

P. "label" means the display of all written, printed or graphic matter upon the immediate container or statement accompanying a commercial fertilizer or soil conditioner;

Q. "labeling" means all written, printed or graphic matter, upon or accompanying any commercial fertilizer or soil conditioner; and

R. "soil conditioner" means any substance or mixture of substances intended for sale, offered for sale 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, except commercial fertilizer as defined in this section, unmanipulated animal and vegetable manures and other products exempted by regulations of the board.

History: 1953 Comp., § 45-13-13, enacted by Laws 1963, ch. 184, § 3; 1975, ch. 181, § 3.

76-11-4. Registration.

A. Each brand and grade of commercial fertilizer and each soil conditioner product shall be registered before being distributed in this state. The application for registration shall be submitted to the department on a form furnished by the department and shall be accompanied by a fee of five dollars (\$5.00) per brand or grade, except that those brands or grades sold in packages of five pounds or less shall be registered at a fee of fifteen dollars (\$15.00) each. Upon approval by the department, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year.

B. A distributor shall not be required to register any brand of commercial fertilizer or soil conditioner which is already registered under the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] by another person.

C. A distributor shall not be required to register a commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing; but shall be required to label the fertilizer as provided in Subsection C of Section 76-11-5 NMSA 1978.

History: 1953 Comp., § 45-13-14, enacted by Laws 1963, ch. 184, § 4; 1975, ch. 181, § 4.

76-11-5. Labeling.

A. Any commercial fertilizer distributed in this state in containers shall have placed on, or affixed to, the container a label setting forth in clearly legible and conspicuous form the following information:

- (1) the net weight or other measure prescribed as satisfactory to the board;
- (2) brand and grade;
- (3) guaranteed analysis; and
- (4) name and address of the registrant.

B. If a commercial fertilizer is distributed in bulk, a written or printed statement of the information required by Paragraphs (1), (2), (3) and (4) of Subsection A of this section shall accompany delivery and be supplied to the purchaser at time of delivery.

C. A commercial fertilizer formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the net weight, guaranteed analysis and the name and address of the distributor.

D. Each brand of soil conditioner distributed in this state shall be accompanied by a legible label bearing the following information:

- (1) net weight or other measure prescribed as satisfactory by the board;
- (2) the brand name under which the soil conditioner is distributed;
- (3) an accurate statement of composition and purpose; and
- (4) the name and address of the registrant.

History: 1953 Comp., § 45-13-15, enacted by Laws 1963, ch. 184, § 5; 1975, ch. 181, § 5.

76-11-6. Inspection fees.

A. There shall be paid to the department for all commercial fertilizer and soil conditioner distributed in this state an inspection fee set by the board at a rate not to exceed thirty-five cents (\$.35) a ton; provided, that sales to manufacturers or exchanges between them are exempted. Fees so collected shall be used for the payment of the costs of inspection, sampling and analysis and other expenses necessary for the administration of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978].

B. On individual packages of commercial fertilizer or soil conditioner containing five pounds or less, there shall be paid in lieu of the annual registration fee of five dollars (\$5.00) per brand and grade of commercial fertilizer and each soil conditioner product and the required inspection fee, an annual registration fee and inspection fee of fifteen dollars (\$15.00). Where a

person sells commercial fertilizer or soil conditioner in packages of five pounds or less and in packages over five pounds, the annual registration and inspection fee of fifteen dollars (\$15.00) shall apply only to that portion sold in packages of five pounds or less, and that portion sold in packages over five pounds shall be subject to the inspection fee.

C. Every person who distributes a commercial fertilizer or soil conditioner in this state shall file with the department, on forms furnished by the department, a quarterly statement for the periods ending March 31, June 30, September 30 and December 31, setting forth the number of net tons of each commercial fertilizer or soil conditioner distributed in this state during the quarter. The report shall be due on or before the last day of the month following the close of each quarter. The inspection fee shall be paid at the time of filing of the statement. If the tonnage report is not filed, and the payment of inspection fee is not made within thirty days after the end of the quarter, a collection fee amounting to ten percent, but not less than ten dollars (\$10.00), of the amount shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

D. When more than one person is involved in the distribution of a commercial fertilizer or soil conditioner, the last person who has the fertilizer or soil conditioner registered and who distributes to a nonregistrant dealer or consumer is responsible for reporting the tonnage and paying the inspection fee, unless the report and payment has been previously made by a prior distributor.

History: 1953 Comp., § 45-13-16, enacted by Laws 1963, ch. 184, § 6; 1975, ch. 181, § 6.

76-11-7. Inspection; sampling; analysis.

A. The department, shall sample, inspect, make analyses of and test commercial fertilizers and soil conditioners distributed within this state at a time and place and to the extent as it may be deemed necessary to determine whether the commercial fertilizer or soil conditioner is in compliance with the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978]. The department may enter upon any public or private premises or carriers during the regular business hours in order to have access to commercial fertilizer or soil conditioners subject to the provisions of the New Mexico Fertilizer Act and the regulations pertaining thereto.

B. The methods of analysis and sampling shall be those adopted by the department from sources such as the association of official agricultural chemists.

C. The department in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined by Section 76-11-3 NMSA 1978 of the New Mexico Fertilizer Act, obtained and analyzed as provided for in Subsection B of this section.

D. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

History: 1953 Comp., § 45-13-17, enacted by Laws 1963, ch. 184, § 7; 1975, ch. 181, § 7.

76-11-8. Plant food deficiency.

A. If the analysis shows that any commercial fertilizer falls short of the guaranteed analysis in any one ingredient, penalty shall be assessed in accordance with the following:

(1) total nitrogen: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent; 0.25 of one percent on goods that are guaranteed three percent; 0.35 of one percent on goods that are guaranteed four percent; 0.40 of one percent on goods that are guaranteed five percent up to and including eight percent; 0.50 of one percent on goods guaranteed above eight percent up to and including thirty percent; and 0.75 of one percent on goods guaranteed over thirty percent;

(2) available phosphoric acid or available phosphorus: a penalty of three times the value of the deficiency, if the deficiency exceeds 0.40 of one percent of available phosphoric acid (P₂O₅) on goods that are guaranteed up to and including ten percent; 0.50 of one percent of available phosphoric acid (P₂O₅) on goods that are guaranteed above ten percent up to and including twenty-five percent; and 0.75 of one percent of available phosphoric acid (P₂O₅) on goods guaranteed over twenty-five percent. If guarantees are for available phosphorus, the deficiencies shall be calculated for the appropriate percentage of elemental phosphorus;

(3) soluble potash or soluble potassium: a penalty of three times the value of the deficiency, if the deficiency is in excess of 0.20 of one percent of soluble potash (K₂O) on goods that are guaranteed two percent; 0.30 of one percent of soluble potash (K₂O) on goods that are guaranteed three percent; 0.40 of one percent of soluble potash (K₂O) on goods guaranteed four percent; 0.50 of one percent of soluble potash (K₂O) on goods guaranteed above four percent up to and including eight percent; 0.60 of one percent of soluble potash (K₂O) on goods guaranteed above eight percent up to and including twenty percent; and 1.00 of one percent of soluble potash (K₂O) on goods guaranteed over twenty percent. If guarantees are for soluble potassium, the deficiencies shall be calculated for the appropriate percentage of elemental potassium;

(4) deficiencies in any other constituent or constituents shall be evaluated by the department and penalties therefor prescribed by the board.

B. Nothing contained in this section shall prevent any person from appealing to a court of competent jurisdiction praying for judgment as to the justification of the penalties.

C. All penalties assessed under this section shall be paid to the consumer of the lot of commercial fertilizer represented by the sample analyzed within three months after the date of notice from the department to the registrant, receipts taken therefor and found, and promptly forwarded to the department. If the consumer cannot be found, the amount of the penalty shall be paid to the common school fund.

History: 1953 Comp., § 45-13-18, enacted by Laws 1963, ch. 184, § 8; 1975, ch. 181, § 8.

76-11-9. Commercial value.

For the purpose of determining the commercial values to be applied under the provisions of Section 76-11-8 NMSA 1978, the department shall determine and publish annually the values per pound of nitrogen, available phosphoric acid and soluble potash in commercial fertilizers in this state. If guarantees are provided, the values shall be per pound of nitrogen, phosphorus and potassium. The values so determined and published shall be used in determining and assessing penalties.

History: 1953 Comp., § 45-13-19, enacted by Laws 1963, ch. 184, § 9; 1975, ch. 181, § 9.

76-11-10. Misbranding.

No person shall distribute misbranded fertilizer or soil conditioner. A commercial fertilizer or soil conditioner shall be deemed to be misbranded if:

- A. its labeling is false or misleading in any particular;
- B. it is distributed under the name of another fertilizer or soil conditioner product;
- C. it is not labeled as required in Section 76-11-5 NMSA 1978 and in accordance with regulations prescribed under the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978]; or
- D. it purports to be, or is represented as, a commercial fertilizer or soil conditioner, or is represented as containing a plant nutrient, commercial fertilizer or soil conditioner unless such plant nutrient, commercial fertilizer or soil conditioner conforms to the definition of identity, if any, prescribed by regulation of the board; in adopting such regulations, the board shall give due regard to commonly accepted definitions and official fertilizer terms such as those issued by the association of American plant food control officials.

History: 1953 Comp., § 45-13-20, enacted by Laws 1975, ch. 181, § 10.

76-11-11. Tonnage reports.

The person transacting, distributing or selling commercial fertilizer or soil conditioner to a nonregistrant shall mail the department a report showing the county of the consignee, the amounts in tons of each grade of commercial fertilizer and each soil conditioner product and the form in which the fertilizer or soil conditioner was distributed, such as bags, liquid, bulk or other forms. This information shall be reported by one of the following methods:

- A. submitting a summary report approved by the department on or before the fifteenth day of each month covering shipments made during the preceding month; or
- B. submitting a copy of the invoice within five business days after shipment. No information furnished the department under this section shall be disclosed in such a way as to divulge the operation of any person.

History: 1953 Comp., § 45-13-21, enacted by Laws 1963, ch. 184, § 11; 1971, ch. 203, § 1; 1975, ch. 181, § 11.

76-11-12. Publications.

The board shall publish at least annually and in a form as it deems proper:

- A. information concerning the distribution of commercial fertilizers and soil conditioners; and
- B. results of analysis based on official samples of commercial fertilizers and soil conditioners distributed within the state as compared with the analysis guaranteed in the registration and the label.

History: 1953 Comp., § 45-13-22, enacted by Laws 1963, ch. 184, § 12; 1975, ch. 181, § 12.

76-11-13. Regulations.

For the enforcement of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978], the board may prescribe and, after public hearing following due public notice, adopt the regulations relating to the distribution of commercial fertilizers and soil conditioners as it may find necessary to carry into effect the full intent and meaning of the New Mexico Fertilizer Act. Under this section the board is empowered to promulgate regulations for the storing, hauling and handling of anhydrous ammonia and other gaseous or liquid fertilizers, and they shall have the same effect as law.

History: 1953 Comp., § 45-13-23, enacted by Laws 1963, ch. 184, § 13; 1967, ch. 69, § 1; 1975, ch. 181, § 13.

76-11-14. Short weight.

If any commercial fertilizer or soil conditioner in the possession of the consumer is found by the department to be short in weight, or other measure prescribed by the board, the registrant of the commercial fertilizer or soil conditioner shall, within thirty days after official notice from the department pay to the consumer a penalty equal to four times the value of the actual shortage.

History: 1953 Comp., § 45-13-24, enacted by Laws 1963, ch. 184, § 14; 1975, ch. 181, § 14.

76-11-15. Cancellation of registrations.

The department may cancel the registration of any brand of commercial fertilizer or soil conditioner or refuse to register any brand of commercial fertilizer or soil conditioner, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978], or any regulations promulgated thereunder; provided, that no registration shall

be revoked or refused until the registrant is given an opportunity to appear for a hearing by the department.

History: 1953 Comp., § 45-13-25, enacted by Laws 1963, ch. 184, § 15; 1975, ch. 181, § 15.

76-11-16. Stop sale orders.

The department may issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of commercial fertilizer or soil conditioner and to be held at a designated place when the department finds the commercial fertilizer or soil conditioner is being offered or exposed for sale in violation of any of the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] until the law has been complied with and the commercial fertilizer or soil conditioner is released, in writing, by the department, or the violation has been otherwise legally disposed of by written authority. The department shall release the commercial fertilizer or soil conditioner so withdrawn when the requirements of the provisions of the New Mexico Fertilizer Act have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

History: 1953 Comp., § 45-13-26, enacted by Laws 1963, ch. 184, § 16; 1975, ch. 181, § 16.

76-11-17. Seizure; condemnation; sale.

A. Any lot of commercial fertilizer or soil conditioner not in compliance with the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] is subject to seizure on complaint of the department to a court of competent jurisdiction in the area in which the commercial fertilizer or soil conditioner is located.

B. In the event the court finds the commercial fertilizer or soil conditioner to be in violation of the New Mexico Fertilizer Act and orders the condemnation of the commercial fertilizer or soil conditioner it shall be disposed of in any manner consistent with the quality of the commercial fertilizer or soil conditioner and the laws of the state.

C. In no instance shall the disposition of the commercial fertilizer or soil conditioner be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial fertilizer or soil conditioner or for permission to process or relabel the commercial fertilizer or soil conditioner to bring it into compliance with the New Mexico Fertilizer Act.

History: 1953 Comp., § 45-13-27, enacted by Laws 1963, ch. 184, § 17; 1975, ch. 181, § 17.

76-11-18. Violations.

A. If it appears from the examination of any commercial fertilizer or soil conditioner that any of the provisions of the New Mexico Fertilizer Act [Article 11 of Chapter 76 NMSA 1978] or the regulations issued thereunder have been violated, the department shall cause notice of the violations to be given to the registrant, distributor or possessor from whom the sample was taken;

any person so notified shall be given opportunity to be heard under the regulations as is prescribed by the board. If it appears after the hearing, either in the presence or the absence of the person so notified, that any of the provisions of the New Mexico Fertilizer Act, or regulations issued thereunder, have been violated, the department may certify the facts to the proper district attorney.

B. Any person convicted of violating any provision of the New Mexico Fertilizer Act or the regulations issued thereunder shall be guilty of a misdemeanor.

C. Nothing in the New Mexico Fertilizer Act shall require the department or its representative to report for prosecution, or for the institution of seizure proceedings, as a result of minor violations of the New Mexico Fertilizer Act when it believes that the public interests will be best served by a suitable notice of warning in writing.

D. 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 the New Mexico Fertilizer Act, or any regulation promulgated under that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

History: 1953 Comp., § 45-13-28, enacted by Laws 1963, ch. 184, § 18; 1975, ch. 181, § 18.

76-11-19. Exchanges between manufacturers.

Nothing in the New Mexico Fertilizer Act [76-11-1 to 76-11-19 NMSA 1978] shall be construed to restrict or avoid sales or exchanges of commercial fertilizers or soil conditioners to each other by importers, manufacturers or manipulators who mix those materials for sale, or as preventing the free and unrestricted shipments of commercial fertilizer or soil conditioners to manufacturers or manipulators who have registered their brands as required by the provisions of the New Mexico Fertilizer Act.

History: 1953 Comp., § 45-13-29, enacted by Laws 1963, ch. 184, § 19; 1975, ch. 181, § 19.
