

Act No. 299
Public Acts of 2010
Approved by the Governor
December 16, 2010
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Reps. Terry Brown, Scripps, Warren, Miller, Polidori, Sheltrown, Leland, Lipton, Bledsoe, Gonzales, Espinoza, Smith, Donigan, Roberts, Kennedy and Meadows

ENROLLED HOUSE BILL No. 5368

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 8501, 8517, and 8520 (MCL 324.8501, 324.8517, and 324.8520), section 8501 as amended by 2008 PA 13, section 8517 as amended by 2008 PA 14, and section 8520 as added by 2006 PA 503, and by adding sections 8512b, 8512f, and 8512g.

The People of the State of Michigan enact:

Sec. 8501. As used in this part:

(a) "Adulterated product" means a product that 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, or if 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.

(b) "Agricultural use" means that term as defined in section 36101.

(c) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(d) "Aquifer sensitivity" means a hydrogeologic function representing the inherent abilities of materials surrounding the aquifer to attenuate the movement of nitrogen fertilizers into that aquifer.

(e) "Aquifer sensitivity region" means an area in which aquifer sensitivity estimations are sufficiently uniform to warrant their classification as a unit.

(f) "Brand or product name" means a term, design, or trademark used in connection with 1 or more grades of fertilizer.

(g) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(h) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or blended as specifically requested by the consumer prior to blending.

(i) "Department" means the department of agriculture.

(j) "Director" means the director of the department or his or her designee.

(k) "Distribute" means to import, consign, sell, barter, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(l) "Distributor" means any person who distributes fertilizer for sale or use in this state.

(m) "Fertilizer" means a substance containing 1 or more recognized plant nutrients, which substance is used for its plant nutrient content and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and other materials exempted by rules promulgated under this part.

(n) "Fertilizer material" means a fertilizer to which 1 or more of the following apply:

(i) Contains not more than 1 of the following as primary nutrients:

(A) Total nitrogen (N).

(B) Available phosphate (P_2O_5).

(C) Soluble potash (K_2O).

(ii) Has 85% or more of its plant nutrient content present in the form of a single chemical compound.

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

(o) "Finished sewage sludge product" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment, or other means.

(p) "Fund" means the fertilizer control fund created under section 8514.

(q) "Grade" means the percentage guarantee of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O), of a fertilizer. Grade shall be stated in the same order given in this subdivision. Indication of grade does not apply to peat or peat moss or soil conditioners.

(r) "Groundwater" means underground water within the zone of saturation.

(s) "Groundwater stewardship practices" means any of a set of voluntary practices adopted by the commission of agriculture pursuant to part 87, designed to protect groundwater from contamination by fertilizers.

(t) "Guaranteed analysis" means the minimum percentage of each plant nutrient guaranteed or claimed to be present.

(u) "Impervious surface" means a paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.

(v) "Label" means any written, printed, or graphic matter on or attached to packaged fertilizer or used to identify fertilizer distributed in bulk or held in bulk storage.

(w) "Labeling" means all labels and other written, printed, electronic, or graphic matter upon or accompanying any fertilizer at any time, and includes advertising, sales literature, brochures, posters, and internet, television, and radio announcements used in promoting the sale of that fertilizer.

(x) "Licensee" means the person who receives a license to manufacture or distribute fertilizers under this part.

(y) "Lot" means an identifiable quantity of fertilizer that can be sampled officially according to methods adopted under section 8510, that is contained in a single vehicle, or that is delivered under a single invoice.

(z) "Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil or plant additive.

(aa) "Manufacture" means to process, granulate, compound, produce, mix, blend, or alter the composition of fertilizer or fertilizer materials.

(bb) "Organic manure" means manure derived solely from living organisms without manipulation.

(cc) "Sewage sludge" means sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.

(dd) "Turf" means land, including residential, commercial, or industrial property, golf courses, or publicly owned land, that is planted in closely mowed, managed grass, except land used in the operation of a commercial farm.

Sec. 8512b. (1) Beginning January 1, 2012, except as provided in subsection (2), (3), (4), or (5), a person shall not apply to turf a fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5).

(2) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate (P_2O_5) in the soil is deficient to support healthy turf grass growth or establishment, a person may apply fertilizer to the turf at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(3) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subsection (2) has not been performed, a person may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the standard rate for new turf grass establishment, which shall be specified by the director after consultation with the Michigan state university extension.

(4) A person may apply a finished sewage sludge product, an organic manure, or a manipulated manure to turf at a rate of not more than 0.25 pounds of phosphorus per 1,000 square feet at any 1 time.

(5) In addition, a person may apply fertilizer labeled as containing the plant nutrient available phosphate (P_2O_5) to a golf course if 1 or more of the following apply:

(a) The golf course has been certified by an organization as a result of the golf course's staff having successfully completed a training program approved by the director. The director shall approve a training program if it is a continuing program, adequately addresses best management practices for use of turf fertilizer containing available phosphate, and requires trainees to demonstrate successful implementation of those best management practices.

(b) If a tissue, soil, or other test performed within the preceding 3 years by a laboratory experienced in conducting tests for phosphorus that adhere to recognized national standards indicates that the level of available phosphate in the soil is deficient to support healthy golf course turf grass growth or establishment, the golf course may apply fertilizer at an application rate for available phosphate not exceeding that necessary to correct the deficiency.

(c) If new turf is being established using seed or sod, it is the first growing season for the turf grass at the site, and a test described in subdivision (b) has not been performed, a golf course may apply fertilizer to the turf at an application rate for available phosphate (P_2O_5) not exceeding the rate necessary for new golf course turf grass establishment.

(6) A person shall not apply fertilizer to turf less than 15 feet from any surface water, unless 1 or more of the following apply:

(a) A continuous natural vegetative buffer at least 10 feet wide separates the turf from the surface water.

(b) A spreader guard, deflector shield, or drop spreader is used when applying the fertilizer, and the fertilizer is not applied less than 3 feet from the surface water.

(7) A person shall not clean a fertilizer spreader that is used to apply fertilizer to turf in a manner that allows wash water from the spreader to discharge directly into waters of this state, including, but not limited to, a drain under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630.

(8) The department shall post information concerning the requirements of subsections (1) to (5) on its website and publicize the availability of that information by whatever means the department determines to be appropriate.

Sec. 8512f. (1) A person who releases fertilizer on an impervious surface shall do both of the following:

(a) Promptly contain the fertilizer.

(b) Either legally apply the fertilizer to turf or another appropriate site or return the fertilizer to an appropriate container.

(2) A person shall not apply a fertilizer to turf if the soil is frozen or saturated with water.

Sec. 8512g. The department, in consultation with the fertilizer industry representatives, fertilizer retailers, statewide environmental organizations, lake groups, and other interested parties, may approve consumer information on use restrictions and recommended best practices for lawn fertilizer containing available phosphate (P_2O_5), and on best management practices for other residential uses of phosphorus. The information shall be in a format and include content suitable for use by the general public or posting and distribution at retail points of sale of turf fertilizer.

Sec. 8517. (1) Except as otherwise provided in this section, this part preempts any local ordinance, regulation, or resolution that would duplicate, extend, or revise in any manner the provisions of this part. Except as otherwise provided for in this section, a local unit of government shall not adopt, maintain, or enforce an ordinance, regulation, or resolution that contradicts or conflicts in any manner with this part.

(2) If a local unit of government is under contract with the department to act as its agent or the local unit of government has received prior written authorization from the department, that local unit of government may adopt an ordinance that is identical to this part and rules promulgated under this part, except as prohibited in subsection (6). The local unit of government's enforcement response for a violation of the ordinance that involves the manufacturing, storage, distribution, sale, or agricultural use of products regulated by this part is limited to issuing a cease and desist order in the manner prescribed in section 8511.

(3) A local unit of government may adopt an ordinance prescribing standards different from those contained in this part and rules promulgated under this part and that regulates the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part only under either or both of the following circumstances:

(a) Unreasonable adverse effects on the environment or public health will otherwise exist within the local unit of government, taking into consideration specific populations whose health may be adversely affected within that local unit of government.

(b) The local unit of government has determined that the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part within that unit of government has resulted or will result in the violation of other existing state or federal laws.

(4) An ordinance adopted under subsection (2) or (3) shall not conflict with existing state laws or federal laws. An ordinance adopted under subsection (3) shall not be enforced by a local unit of government until approved by the commission of agriculture. The commission of agriculture shall provide a detailed explanation of the basis of a denial within 60 days.

(5) Within 60 days after the legislative body of a local unit of government submits to the department a resolution identifying unreasonable adverse effects on the environment or public health as provided for in subsection (3)(a), the department shall hold a local public meeting to determine the nature and extent of unreasonable adverse effects on the environment or public health due to the manufacturing, storage, distribution, sale, or agricultural use of a product regulated by this part. Within 30 days after the local public meeting, the department shall issue a detailed opinion regarding the existence of unreasonable adverse effects on the environment or public health as identified by the resolution of the local unit of government.

(6) The director may contract with a local unit of government to act as its agent for the purpose of enforcing this part and the rules promulgated under this part. The department has sole authority to assess fees, register fertilizer or soil conditioner products, cancel or suspend registrations, and administer and enforce provisions of section 8512.

(7) A local unit of government that adopts an ordinance under subsection (2) or (3) shall require persons enforcing the ordinance to comply with training and enforcement requirements determined appropriate by the director.

(8) Subsection (1) does not prohibit the maintenance or enforcement of an ordinance that regulates or prohibits the application to turf of fertilizer containing the plant nutrient available phosphate (P_2O_5), but only if the ordinance was in effect on the enactment date of the amendatory act that added this subsection.

Sec. 8520. (1) A person who violates or attempts to violate this part or rules promulgated under this part is subject to the penalties and remedies provided in this part regardless of whether he or she acted directly or through an employee or agent.

(2) The director, upon finding after notice and an opportunity for an administrative hearing that a person has violated or attempted to violate any provision of this part or a rule promulgated under this part, may impose an administrative fine of not more than \$1,000.00 for each violation or attempted violation. A person shall not be fined under both this subsection and subsection (7) for the same violation or attempted violation. A person shall not be fined under this subsection for a violation described in subsection (7)(b).

(3) If the director finds that a violation or attempted violation has occurred despite the exercise of due care or did not result in significant harm to human health or the environment, the director may issue a warning instead of imposing an administrative fine.

(4) The director shall advise the attorney general of the failure of any person to pay an administrative fine imposed under this section. The attorney general shall bring an action in a court of competent jurisdiction to recover the fine.

(5) A person who violates this part or a rule promulgated under this part, or attempts to violate this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00 for each violation or attempted violation, in addition to any administrative fines imposed. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(6) A person who knowingly and with malicious intent violates or attempts to violate this part or a rule promulgated under this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$25,000.00 for each offense. This subsection does not apply to a violation or attempted violation of section 8512b or 8512f.

(7) A person who violates or attempts to violate section 8512b or 8512f is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than the following for each violation or attempted violation:

(a) Except as provided in subdivision (b), not more than \$1,000.00.

(b) Not more than \$50.00 if all of the following apply:

(i) The violation or attempted violation occurs on a single-family residential parcel, or any other parcel or contiguous parcels with a total of not more than 4 acres of turf.

(ii) The violation or attempted violation is committed by the property owner or lessee, a member of his or her family, or a person who resides on the property.

(8) The director may bring an action to enjoin the violation or threatened violation of this part or a rule promulgated under this part in a court of competent jurisdiction of the county in which the violation occurs or is about to occur.

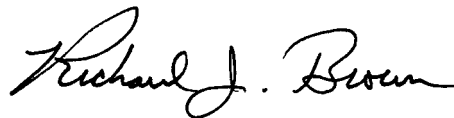
(9) The attorney general may file a civil action in which the court may impose on any person who violates or attempts to violate this part or a rule promulgated under this part, other than section 8512b or 8512f, a civil fine of not more than \$5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from any person who violated this part or attempted to violate this part. Money recovered under this subsection shall be forwarded to the state treasurer for deposit into the fund.

(10) In defense of an action filed under this section for a violation or attempted violation of this part, in addition to any other lawful defense, a person may present evidence as an affirmative defense that, at the time of the alleged violation or attempted violation, he or she was in compliance with this part and rules promulgated under this part.

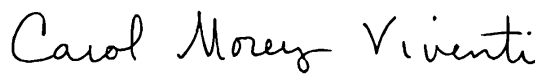
(11) A person who violates this part is liable for all damages sustained by a purchaser of a product sold in violation of this part. In an enforcement action, a court, in addition to other sanctions provided by law, may order restitution to a party injured by the purchase of a product sold in violation of this part.

(12) A civil action filed pursuant to this part is subject to applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor