

## FERTILIZERS.

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No. 11 of 1977.

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**AN ACT to control and regulate the production, marketing and sale of fertilizers and for incidental and other purposes.**

*[Assented to 30th September, 1977.]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I.—INTRODUCTORY.

1. This Act may be cited as the *Fertilizers Act*, Citation.  
1977.

2. The provisions of this Act shall come into operation on such day or days as is or are, Commence-  
respectively, fixed by proclamation. ment.

Repeal and  
savings.

3. (1) The Fertilisers Act, 1928-1973 is repealed.

(2) Without affecting the application of the Interpretation Act, 1918 and particularly sections 15 and 16 thereof to the repeal by subsection (1) of this section of the Fertilisers Act, 1928-1973 it is hereby expressly declared that until regulations are made under this Act the regulations made under the Fertilisers Act, 1928-1973 and in force at the time that this Act comes into operation shall apply, so far as applicable, to persons, acts, circumstances and things under this Act, as if those regulations were made under this Act.

Arrange-  
ment.

4. The arrangement of this Act is as follows—

PART I.—INTRODUCTORY, ss. 1-5.

PART II.—APPLICATION, ss. 6-9.

PART III.—ADMINISTRATION, ss. 10-12.

PART IV.—REGISTRATION, ss. 13-18.

PART V.—SALES, LABELLING AND WARRANTIES, ss.  
19-26.

PART VI.—MISCELLANEOUS, ss. 27-44.

Interpreta-  
tion.

5. (1) In this Act unless the contrary intention appears—

“advertisement” in relation to any fertilizer means any method of advertising or conveying information or making a claim with respect to that fertilizer whether orally or pictorially or otherwise, and includes any notice, circular, catalogue, label, packaging, invoice or other document, and any public announcement made orally or by writing or by any means of producing or transmitting light or sound;

“analysis” means an examination, or any other test or determination relative to standard, of the quality or composition or of any other particular with respect to any fertilizer

or substance to which this Act applies required to be ascertained for the purposes of this Act;

“analyst” means a person appointed as an analyst under the provisions of section 30;

“container” includes any package, sack, bag, barrel, case, basket, wrapper, bottle, can, drum or receptacle of any kind including a bulk container, railway truck or motor truck or any means of bulk transport, in or by means of which fertilizer is or is intended to be contained, covered, enclosed or packed;

“Director” means the person who holds or acts in the office of Director of the Department of Agriculture of the Public Service of the State;

“fertilizer” means a substance containing nitrogen, phosphorus, potassium or any other element required for plant growth or any compound thereof manufactured, prepared, produced or sold for the purpose of fertilizing the soil or supplying nutriment to plants, crops or trees and any substance used for conditioning the soil for that purpose and any other substance prescribed to be a fertilizer but does not include animal or vegetable manure or other unmanufactured refuse unless mixed with a fertilizer and as so mixed, manufactured, prepared, produced or sold as a fertilizer;

“inspector” means a person appointed as an inspector under section 12;

“label” includes any tag, brand, stamp, mark or statement in writing however effected, affixed to or upon or inserted in or used or intended for use in connection with any container or packaging of any fertilizer and whether or not comprising any trade

description, trade mark or pictorial or other descriptive matter distinguishing or identifying that fertilizer or substance;

“primary dealer” in relation to any fertilizer means the person or persons who, whether as manufacturer, producer, importer, packer or distributor, as the case may require, is, are, or will be responsible in the first instance for that fertilizer being placed on the market in this State under the trade description by which it is sold;

“Register” means the register established and maintained pursuant to section 11 ;

“Registrar” means the person holding or acting in the office of Registrar established under section 11 ;

“registration year” means the year in which this Act comes into operation and every third year thereafter;

“section” means a section of this Act;

“sell”, without limiting the scope of the primary meaning, includes—

- (a) placing on the market for sale;
- (b) bargaining, barter or exchange;
- (c) supply and use of any fertilizer under a contract for work and materials;
- (d) offering, exposing, receiving, supplying or possessing for the purposes of sale;
- (e) delivery for sale or on sale with or without consideration;
- (f) wholesale, bulk and retail trading;
- (g) disposal or offer for disposal under hire purchase or credit sale terms;
- (h) dealing in or agreeing to sell;
- (i) the supply of a substance as a sample for the purpose of inducing any

person to purchase the fertilizer of which the sample consists or which it comprises; and

- (j) causing, suffering, permitting, or attempting to sell;

“seller” includes any person acting or representing himself to be acting for a seller;

“specified ingredient” means boron, calcium, cobalt, copper, iron, magnesium, manganese, molybdenum, nitrogen, phosphorus, potassium, selenium, sulphur, zinc and any substance prescribed to be a specified ingredient;

“substance” includes a liquid or gas, and any compound or mixture;

“trade description” in relation to any fertilizer or any ingredient thereof, means any description, statement, indication, or suggestion, direct or indirect as to—

- (a) the nature, number, quality, quantity, purity, classification, grade, measure, gauge, size, or weight of the fertilizer;
- (b) the country or place in or at which the fertilizer was made or produced;
- (c) the manufacturer or producer of the fertilizer, or the person by whom the fertilizer is selected, processed, packed, or in any way prepared for sale;
- (d) the mode of manufacturing, producing, treating, processing, selecting, packing, or otherwise preparing the fertilizer;
- (e) the substances, materials or ingredients of which the fertilizer is composed, or from which it is derived;

- (f) the fertilizer being the subject of an existing patent, privilege, trademark or copyright; or
- (g) the efficacy of the fertilizer, or as to the effects which have followed, or may be expected to follow the use thereof.

## PART II.—APPLICATION.

Application.

6. (1) Subject to subsection (2) of this section and to any Order in Council made pursuant to section 7, this Act applies to all fertilizers produced or imported into the State and sold in the State whether by wholesale or retail, whether or not the supply or sale thereof is normally restricted to a particular class of person and whether contained in a mixture, compound or otherwise, including bulk consignments.

(2) This Act does not apply to the sale of a fertilizer prepared in accordance with the written prescription supplied by the buyer of the fertilizer.

Exemptions  
by Order.

7. The Governor may by Order in Council declare that this Act, or any provision of this Act specified in the Order, shall not apply to any fertilizer either generally or when sold in specified circumstances or quantities or part of the State, or which is intended to be used solely for research purposes, and may by subsequent Order in Council revoke or vary such Order in Council.

Prohibitions.

8. The Governor may make regulations to prohibit the sale of any fertilizer or any substance which may be used as an ingredient of a fertilizer either—

(a) absolutely; or

(b) except upon and subject to specified conditions, restrictions and limitations,

as the Governor considers desirable in the public interest which may be imposed without limitation as to time or for a specified period of time.

9. The provisions of this Act are in addition to and not in derogation of the provisions of the Health Act, 1911, or the Poisons Act, 1964 but where and to the extent that inconsistency exists between the provisions of this Act or of any regulations made under this Act, and a provision of any of those Acts or of any regulations made under those Acts, the provisions of those Acts and any regulations made thereunder prevail.

Effect of  
other laws.

PART III.—ADMINISTRATION.

10. Subject to the Minister and to the provisions of this Act the Director shall be responsible for the administration of this Act.

Administra-  
tion.

11. (1) The Director shall designate an officer of the Department of Agriculture of the State to be Registrar of Fertilizers.

Registrar.

(2) The Registrar shall—

- (a) cause to be kept a Register in the prescribed form showing in respect of each registration required to be effected under this Act the information required to be furnished by or under this Act; and
- (b) carry out such other duties as may be required under or in furtherance of the provisions of this Act.

(3) The Register shall on payment of the prescribed fee be available for public inspection at such times as are determined by the Director.

(4) The Registrar shall remove from the Register the name of any fertilizer the registration of which has been cancelled or which has been declared by the Governor to be a prohibited fertilizer pursuant to section 8.

(5) The Registrar shall furnish a report on the operation of this Act to the Director not later than six months after the thirtieth day of each June.

Inspectors.

12. (1) The Director may designate officers of the Department of Agriculture of the State as Inspectors under this Act.

(2) The Director shall furnish each inspector with a certificate of appointment in the prescribed form and the holder shall produce the certificate whenever required so to do by a person in respect of whom he has exercised or is about to exercise any of his powers under this Act.

(3) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the person to whom that certificate relates and of his authority to exercise the powers conferred upon him by this Act.

#### PART IV.—REGISTRATION.

Fertilizers  
to be  
registered.

13. (1) Before any fertilizer is offered for sale in the State a person who is, or intends to be, a primary dealer in the State in relation to that fertilizer shall make application in the prescribed form to the Registrar for the registration of that fertilizer in his name for the purposes of this Act.

(2) Notwithstanding subsection (1) of this section, where a fertilizer is already registered under the repealed Act at the time of the coming into operation of this Act a dealer who is registered in relation to that fertilizer shall be deemed to be a primary dealer in relation to that fertilizer after the coming into operation of this Act unless the Registrar otherwise notifies that dealer.

Registration.

14. (1) Subject to this Act, the Registrar upon being satisfied that the provisions of this Act relating to—

- (a) the application;
- (b) the payment of the prescribed fees;
- (c) the primary dealer specified in the application; and



(d) the fertilizer specified in the application, have been complied with, and that there are no grounds upon which the application ought to be refused, shall cause that fertilizer to be registered under this Act and shall notify the applicant of the registration of that fertilizer under this Act.

(2) Notification of registration under this Act shall be in such form as is prescribed.

15. (1) The Registrar shall refuse to register a fertilizer if he is satisfied with respect to that fertilizer that—

Refusal of registration.

- (a) in the public interest it should not be marketed;
- (b) it does not conform in every respect to any standard prescribed in relation to that fertilizer or that an ingredient of the fertilizer does not conform in every respect to the standard prescribed for that ingredient.

(2) Where—

- (a) the Registrar refuses an application for registration, or renewal of registration; or
- (b) the Registrar pursuant to subsection (2) of section 13 notifies a dealer that the provisions of that subsection do not apply in relation to that fertilizer,

he shall forthwith notify the primary dealer and the notification shall be accompanied by a statement in writing setting out the grounds upon which the refusal or the notification was made.

16. Where a fertilizer is in any way altered in relation to—

Change of particulars registered.

- (a) the trade description of the fertilizer;
- (b) the registered name;

- (c) any other registered particular;
- (d) any matter with respect to that fertilizer that may be prescribed for the purposes of this section,

the registration of that fertilizer shall cease to have effect as regards sales of the fertilizer so altered and a person who proposes to sell the fertilizer as so altered shall make an application for registration in the prescribed form to the Registrar as a primary dealer proposing to place that fertilizer on the market in this State in the first instance in its altered form.

Period of  
registration.

17. (1) Subject to this Act, the registration of a fertilizer—

- (a) registered under the repealed Act continues in force until the thirtieth day of October next ensuing after the coming into operation of this Act;
- (b) first registered at any time in the period between the date that this Act comes into operation and the thirtieth day of October next ensuing is valid from the date that notification of registration is issued until the thirtieth day of October of the registration year following the year on which this Act comes into operation;
- (c) first registered at any other time is valid from the date that notification of registration is issued until the thirtieth day of October of the registration year next ensuing,

and is renewable from that date.

(2) Where at the time of first registration the registration of a fertilizer is to have effect for a period other than three years the fee payable in relation to the registration of the fertilizer shall be adjusted rateably to the nearest whole month as the case requires.

(3) Subject to this Act, a renewal of registration of a fertilizer continues that registration in force for a further period of three years from the date of expiry and so on accordingly.

(4) An application for the renewal of the registration of a fertilizer shall be accompanied by the prescribed fee.

18. A person aggrieved by the refusal of the Registrar to grant, amend or renew the registration of a fertilizer under this Act or by a decision of the Registrar amending or cancelling any registration or by a notification of the Registrar given pursuant to subsection (2) of section 13 may within three months after notice of that refusal, decision, requirement or notification as the case may be appeal against it to the Minister who may give such direction in the matter as he thinks just and his decision is final and conclusive.

Appeals.

#### PART V.—SALES, LABELLING AND WARRANTIES.

19. Where a fertilizer has been registered under this Act in the name of a primary dealer then, subject to the provisions of section 16 in particular and of this Act in general, while that fertilizer remains so registered any other person may purchase for re-sale and sell the fertilizer so purchased without making application for its registration under this Act in his own name.

Sales by persons who are not primary dealers.

20. A person who sells—

- (a) a fertilizer; or
- (b) any substance,

Prohibited fertilizers and substances.

the sale of which is prohibited, or prohibited in relation to the conditions under which the sale took place, commits an offence against this Act.

Sale of  
fertilizer.

21. A person who sells any fertilizer—

- (a) without assigning any name or description thereto;
- (b) by reference to a name or trade description which is not registered under this Act in relation to that fertilizer;
- (c) the registration of which has been deemed to be no longer in force by virtue of the provisions of section 16; or
- (d) which is not registered under this Act,

commits an offence against this Act.

Fertilizer  
to conform  
to trade  
description,  
etc.

22. A person who sells or offers to sell any substance under the name of a fertilizer registered under this Act which does not conform in every respect to—

- (a) the trade description registered in relation to that name; or
- (b) any formula, grade, description or composition prescribed in relation to that name, or any ingredient thereof,

commits an offence against this Act.

Sale on  
false  
description.

23. (1) A person who sells any fertilizer—

- (a) to which a false trade description is applied; or
- (b) bearing a symbol or description which, or the advertised symbol or description of which, is misleading,

commits an offence against this Act.

(2) A symbol, description or trade description is deemed to be applied to a fertilizer if it is—

- (a) applied to the fertilizer itself; or
- (b) applied to any container, label or thing used in connection with the fertilizer; or
- (c) applied to any fertilizer by way of advertisement.

24. (1) Subject to this Act, a person who sells or offers to sell a fertilizer in a container commits an offence unless there is affixed or attached to or printed on the container containing the fertilizer a label setting out in legible characters such particulars as are prescribed. Labelling.

(2) The provisions of subsection (1) of this section do not apply—

- (a) to sales of small quantities (that is to say, sales in quantities of such amount as is prescribed in relation to that fertilizer, or of any lesser amount) if the fertilizer is taken in the presence of the purchaser from a container marked or labelled in a conspicuous manner with the particulars prescribed; or
- (b) to the sale of fertilizer of an amount of fifty kilograms or more if the invoice issued by the vendor in relation to the sale contains or is attached to a statement setting out the particulars prescribed.

25. (1) Where a container has been used for the purpose of holding or containing a fertilizer the container shall not be used to hold or contain another fertilizer unless— Use of  
secondhand  
containers.

- (a) it has been wholly emptied before being so used;
- (b) any marking relating to its previous use has been so dealt with as to make it clear that that marking is no longer applicable; and
- (c) in relation to its current use that container is marked and labelled in accordance with this Act.

(2) Subsection (1) of this section does not apply where the purchaser supplies the container.

Warranties.

26. (1) Notwithstanding any agreement or notice to the contrary the label applied to a fertilizer or an invoice given by the seller of any fertilizer shall have effect as a written warranty by the seller that—

- (a) the fertilizer conforms to the trade description registered in respect of it;
- (b) the facts set out in any reference or statement with respect to the composition of the fertilizer contained on the label relating to the fertilizer or in the invoice or in any advertisement descriptive of the fertilizer are correct.

(2) Where a fertilizer is sold under a name or description implying that it was prepared from any particular substance, or from two or more particular substances, and without any indication that it is mixed or compounded with any other substance there is an implied warranty by the seller that it is pure, that is to say, that it is prepared from that substance or those substances only.

#### PART VI.—MISCELLANEOUS.

Power of  
inspector  
to enter  
premises,  
etc.

27. (1) Where an inspector has reasonable grounds for believing that any land or any premises, tent, caravan or other erection on land is used for or in connection with the production, importation, treatment, storage, preparation for sale, marketing or sale of a fertilizer he may, with the consent of the occupier, enter the land or premises, tent, caravan or other erection in order to make a search to ascertain whether any fertilizer is therein or thereon.

(2) In the exercise of his powers under this section an inspector shall conform so far as is reasonably possible to such reasonable requirements of the person occupying the land or the premises, tent, caravan or other erection as are necessary to prevent the working of the business being obstructed.

(3) The occupier of any land or premises, tent, caravan or other erection and any person in charge of or apparently in charge therein shall furnish to an inspector all reasonable assistance and such information that he is capable of furnishing or as required by the inspector with respect to the exercise of his powers and the discharge of his duties under this Act.

(4) Where it is shown to the satisfaction of a justice that admission to the land or premises, tent, caravan or other erection has been refused following a request by an inspector for entry thereto, or that the premises are unoccupied, the justice may, by warrant under his hand authorize the inspector and any other person named in the warrant to enter the premises, tent, caravan or other erection, and a warrant granted under this subsection continues in force until the purpose for which it was granted has been satisfied.

(5) An inspector may at any time stop, search and inspect any vehicle, vessel, aircraft or train in order to ascertain if he has reasonable grounds for believing that any fertilizer is therein or thereon for the purpose of exercising any of his powers and the discharge of his duties under this Act.

(6) A person who, being in charge of a vehicle or vessel, fails to stop the vehicle or vessel when so required by a person who makes himself known as being an inspector commits an offence.

28. (1) An inspector who has reasonable grounds for believing that any substance is, or that any package contains a substance which is, a prohibited substance or a fertilizer or a specified or other ingredient of a fertilizer may take for analysis and examination a sample of that substance and where necessary may open the packaging to enable that power to be exercised.

Powers of  
sampling.

(2) Any sample taken under the provisions of subsection (1) of this section shall if possible be taken in the presence of the seller or other person apparently in charge of the substance from which the sample was taken.

(3) The inspector removing the sample shall give to the person in charge of that substance, or of the place where it was located (if that person is known to him), notification of such removal.

(4) The method of taking and treatment of a sample under the provisions of this section shall, where the circumstances are relevant, be such as the Governor may from time to time prescribe.

Tampering  
with  
samples  
or fertilizer.

29. A person who—

- (a) tampers or interferes with any sample or part of a sample taken or delivered under the provisions of this Act; or
- (b) tampers or interferes with any fertilizer from which a sample may be taken under the provisions of this Act in a manner likely to render the sample so taken unrepresentative of the bulk from which the sample was taken,

commits an offence.

Analysts.

30. (1) The Minister may appoint qualified persons as analysts for the purposes of this Act.

(2) A certificate of analysis of a fertilizer issued by an analyst shall be in the prescribed form and shall contain the information required by that form.

(3) Subject to subsection (4) of this section in any proceedings under this Act the production of a certificate referred to in subsection (2) of this section shall without proof of the signature of the person appearing to have signed the certificate or that he is an analyst be evidence—

- (a) of the identity of the thing analysed;



- (b) of the result of the analysis;
- (c) of the matter stated in the certificate; and
- (d) of the fact that the prescribed method for carrying out the analysis has been followed by the analyst in making the analysis.

(4) Subsection (3) of this section does not apply in relation to any proceedings under this Act if the defendant in those proceedings by written notice served on the prosecutor and the analyst who signed the certificate of analysis to be used in those proceedings not less than three days before the date of the hearing requires the analyst to attend at the hearing as a witness.

31. (1) Subject to subsection (2) of this section, where on an analysis of one sample of a fertilizer taken from one container a deficiency is found in—

Limits of variation.

- (a) a specified or other ingredient;
- (b) the neutralizing value; or
- (c) the percentage of fine material,

of that fertilizer by reference to its trade description, but the deficiency so found does not exceed such percentage as is prescribed for the purpose of such sampling, no action shall be brought under this Act in relation to the deficiency unless on an analysis of not less than five samples of the fertilizer taken on one or several occasions (and whether treated individually and the analyses then averaged or whether bulked together and mixed and the analysis then taken) the deficiency so found exceeds such lower percentage as is prescribed for the purpose of such multiple sampling.

(2) Where the specified or other ingredient set out in the trade description of a fertilizer has a content of less than one per cent of the fertilizer by weight the allowable deficiency as regards that ingredient shall be doubled.

(3) Where phosphorus is an ingredient, the phosphorus shall comply with any requirement of the regulations as to the kind and proportion of compounds allowable in relation to that fertilizer.

Offence as to sample deemed offence as to whole lot.

32. When in any proceedings with respect to an offence against this Act a contravention of this Act is proved with respect to a sample of fertilizer delivered for analysis the contravention is deemed also to have been proved with respect to the bulk from which the sample was taken and it is no defence that the sample though deficient or not conforming to prescribed standards in one or more respects contained alternative ingredients intended to have the like effect.

Publication of analysis.

33. (1) Where a sample of a fertilizer has been taken pursuant to the provisions of this Act the Director may, whether or not the fertilizer has been the subject of any proceedings taken under this Act, cause the result of an analysis of the fertilizer to be published in such manner as he may direct.

(2) A publication of the result of an analysis pursuant to subsection (1) of this section may include—

- (a) the name and address of the person from whom the sample was taken or of the person in occupation or apparent occupation of the premises at which the sample was taken;
- (b) any information entered in the Register in relation to that fertilizer;
- (c) the explanations and comments of the analyst in relation to the result of the analysis; and
- (d) a statement of the result of the analysis, and no action lies in respect of that publication.

(3) Where upon an analysis being made the analysis shows that the content of any specified ingredient in the fertilizer falls below the level entered in the Register as being the level of that

specified ingredient with respect to that fertilizer the Director may cause a statement of the analysis to be sent to the primary dealer whose name is entered in the Register in relation to that fertilizer and to any person from whom the sample of the fertilizer was taken or, where the sample was taken in transit, to the vendor thereof or to his agent in this State.

(4) Any proprietor or manager of a newspaper or public print may republish any report which has been published by the Registrar in accordance with the provisions of subsection (1) of this section, and no action shall lie against such proprietor or manager in respect of the republication.

34. Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had had this Act not been enacted.

Saving of  
other rights  
and  
remedies.

35. A person is not bound to accept delivery on sale of any fertilizer unless the relevant provisions of section 24 have been complied with in respect to that sale.

Right of  
buyer to  
refuse  
delivery.

36. (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.

Obstruction.

(2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorized by this Act to call for or may reasonably require, or who, when required to give such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

Protection  
of officers.

37. No act, matter or thing done or omitted to be done in good faith by the Minister, or by the Director, or by the Registrar, or by any inspector or analyst, in the execution or intended execution of this Act, or in the exercise or performance of any of his powers, functions or duties under this Act, subjects that person to any liability.

Provisions  
relating to  
proceedings.

38. (1) Notwithstanding anything in the Justices Act, 1902, where a sample of a fertilizer has been taken for the purposes of a prosecution for an offence against a provision of this Act a prosecution may be brought in respect of the offence after the expiration of a period of six months commencing on the date on which the sample was taken if the justice before whom the complaint is laid, on being satisfied on oath that having regard to the circumstances of the case it was not practicable to institute such proceedings at an earlier date, gives a certificate to that effect.

(2) In any proceedings for an offence relating to a fertilizer in respect of which a sample was taken pursuant to this Act—

- (a) the summons shall not be made returnable less than fourteen days from the date of the issue thereof; and
- (b) a copy of any certificate of analysis obtained on behalf of the prosecutor, and, where the complaint is laid after a period of six months commencing from the date of the taking of the sample, a copy of the certificate given pursuant to subsection (1) of this section, shall be served with the summons.

Costs of  
analysis.

39. In any proceedings under this Act—

- (a) where evidence is given of an analysis made for the purposes of this Act the court may, in addition to any penalty or other order as to costs, and without regard to the

outcome of the proceedings generally, make an order as to the costs of and incidental to the obtaining of the analysis and the giving of evidence as to the analysis;

- (b) the production of a certificate signed or purporting to be signed by an analyst that the costs set out in the certificate (including any charges and expenses) have been incurred in relation to the obtaining of the analysis under this Act shall be *prima facie* evidence that the costs were duly incurred and that the amounts set out in the certificate are the correct amount of such costs.

40. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate may be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

Vicarious liability.

(2) For the purposes of this Act any person on whose behalf a sale is made is deemed to be the person who sells, and every servant or agent of such person is liable to the like penalties as the person on whose behalf he makes any sale.

41. Where in any proceedings for an offence under this Act the court records a finding to the effect that the defendant has satisfied the court that—

Recovery of penalty and costs

- (a) being an agent or a servant, he had acted without knowledge, and could not be reasonably expected to have known, that any provision of this Act had been contravened or had not been complied with; or

- (b) being a principal or employer, he had used due diligence to enforce the execution of this Act and that without his connivance or consent and in contravention of his orders the provisions of this Act were contravened or not complied with by his agent or servant,

and whether or not any other person has been convicted or punished in relation to the same matter, the defendant may recover in any court of competent jurisdiction from any person directly responsible for that contravention of, or failure to comply with, those provisions, the amount of any pecuniary penalty imposed on his conviction and paid or payable by him, together with the costs, fees, charges, and other expenses ordered to be paid upon his conviction and paid or payable by him in or in relation to his defence to the prosecution and as the court may, if it thinks fit, suspend the operation of the conviction for any period not exceeding three months to enable the defendant to effect recovery as provided in this section.

Certificate  
of Director  
to be  
evidence.

42. In any proceedings under this Act, a certificate purporting to be signed by the Director—

- (a) that this Act applies in relation to any substance or thing;
- (b) that a fertilizer is not registered;
- (c) that a fertilizer is registered under this Act and stating the particulars of the registration thereof;
- (d) that the registration of a fertilizer has been cancelled, altered or amended and the particulars of the alteration or amendment; and
- (e) specifying any date or period in relation to any matter stated in the certificate,

is sufficient *prima facie* evidence of the relevant facts stated therein until the contrary is proved.

43. A person who fails to comply with or who contravenes any of the provisions of this Act commits an offence and is liable to a penalty not exceeding five hundred dollars for a first offence and to a penalty not exceeding one thousand dollars for a second or subsequent offence. Penalty.

44. (1) The Governor may make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act and may make all such other regulations as may in his opinion be required or permitted by this Act for giving effect to the provisions of, and for the full execution and due administration of, this Act. Regulations.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Governor may make regulations for or with respect to—

- (a) the application for and the grant, issue, renewal, cancellation or suspension of registration under this Act;
- (b) the manner in which appeals under this Act shall be brought and the procedure to be followed in the conduct of those appeals;
- (c) the form of registers to be kept under this Act and the particulars to be recorded therein;
- (d) the forms to be used for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration;
- (e) the accounts, facts and matters which ought in the opinion of the Registrar to be recorded and vouched in relation to the production or sale of any fertilizer, and the manner in which such records are to be kept and vouched;
- (f) the accounts and returns to be kept and furnished by primary dealers, wholesalers, salesmen, and others for the purposes of this Act;

- (g) controlling all matters with respect to the nature, content and use of labels in relation to a specified fertilizer, and the identification of bulk consignments;
  - (h) the investigation as to the efficacy of fertilizers or ingredients;
  - (i) the taking of samples by inspectors and purchasers;
  - (j) the conduct and methods of analysis;
  - (k) the definition of terms for the purposes of this Act including the use of chemical and physical expressions;
  - (l) any other purpose that the Governor deems necessary for safeguarding the public and the public interest in relation to fertilizers; and
  - (m) such transitional, incidental and supplementary provisions as the Governor deems necessary or expedient for the purpose of this Act.
- (3) Any regulations made under this Act may—
- (a) be of general or limited application, according to time, place or circumstance;
  - (b) prescribe fees to be paid in relation to the grant, amendment or renewal of registration, the charges that shall be payable in relation to other matters under this Act, the persons liable and the method of recovery of amounts not duly paid;
  - (c) impose upon any person or class of person a discretionary authority;
  - (d) provide penalties not exceeding one hundred dollars for offences against the regulations, and daily penalties not exceeding fifty dollars for every day that an offence continues after the offender is convicted.



(4) Regulations may be made under this section—

(a) so as to apply—

- (i) generally or in a particular class of case or in particular classes of cases;
- (ii) at all times or at a specified time or times; and
- (iii) throughout the State or in a specified part or parts of the State;

(b) so as to require a matter affected by them to be—

- (i) in accordance with a specified standard or specified requirement; or
- (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body.

(5) In subsection (4) of this section “specified” means specified in the regulations.

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