

4:9-15.1 to 15.42

December 28, 1970

LEGISLATIVE HISTORY OF R.S. 4:9-15.1 to 4:9-15.42
(Fertilizers, soil conditioner - Reg.)

Copy 2

Earlier bills introduced (1965-1970):

- 1968 - A625
Chapter 450 of 1968
- 1968 - A867
Chapter 392 of 1968
- 1969 - A981 (Littell & others)
Died in Committee.

L. 1970, Chapter 66 - A270
Pre-filed by Littell.
April 13 - Amended in Assembly.
Bill had statement (copy encl.)
Fiscal note (cop. enc.)

Newspaper articles (V.F.--N.J.--Agriculture):
"Fertilizers may soon be regulated" NSL 4-14-70.

No hearings or reports were located.

RSL/PC

ASSEMBLY, No. 270

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1970 SESSION

By Assemblyman LITTELL

AN ACT to regulate the sale and distribution of commercial fertilizers and soil conditioners and repealing sections 4:9-1 through 4:9-15 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of*
2 *of New Jersey:*

1 1. This act may be referred to as the "New Jersey Commercial
2 Fertilizer and Soil Conditioner Act of 1970."

1 2. This act shall be administered by the New Jersey Department
2 of Agriculture.

1 3. As used in this act:

2 (a) "Commercial fertilizer" means a fertilizer material, mixed
3 fertilizer or any other substance containing one or more recognized
4 plant nutrients which is used for its plant nutrient content, which
5 is designed for use or claimed to have value in promoting plant
6 growth, and which is sold, offered for sale, or intended for sale;
7 except that it shall not be considered to include unmanipulated
8 animal or vegetable manures, agricultural liming materials, or wood
9 ashes.

10 (b) "Specialty fertilizer" means a commercial fertilizer dis-
11 tributed primarily for nonfarm use, such as home gardens, lawns,
12 shrubbery, flowers, golf courses, parks, cemeteries, greenhouses,
13 and nurseries.

14 (c) "Customer formulated mix" means a commercial fertilizer
15 prepared expressly for, and according to specifications furnished
16 prior to mixing by, the customer.

17 (d) "Soil conditioner" means any substance intended or claimed
18 to improve the chemical or physical characteristics of the soil which
19 is sold, offered for sale, or intended for sale; except that it shall
20 not be considered to include unmanipulated animal or vegetable
21 manures, agricultural liming materials, or any other materials that
22 may be exempted by regulation.

23 (e) "Brand" means a term, design, or trademark used in con-
24 nection with a soil conditioner or with one or more grades of com-
25 mercial fertilizer.

26 (f) "Grade" means the percentage of total nitrogen, available
27 phosphoric acid, and soluble potash stated in whole numbers in the
28 same terms, order, and percentages as in the guaranteed analysis;
29 provided, however, that fertilizer materials, bone meal, and similar
30 raw materials may be guaranteed in fractional units.

31 (g) "Guaranteed analysis" means the minimum percentage of
32 plant nutrients claimed and set forth in the manner prescribed in
33 subsection 10 (c) of this act.

34 (h) "Index value" means an expression of the actual analysis
35 of a fertilizer compared to the guaranteed analysis determined
36 according to the following formula. Multiply the total nitrogen
37-38 value by 3, the available phosphoric acid value by 2, and the soluble
39 potash value by one, and then add these figures separately for the
40 actual analysis and for the guaranteed analysis to obtain, respec-
41 tively, the total actual value and the total guaranteed value. The
42 index value is obtained by dividing the total actual value by the
43 total guaranteed value.

44 (i) "Official sample" means any sample of commercial fertilizer
45 or soil conditioner taken by an agent of the Department of Agricul-
46 ture and designated as "official" by the department.

47 (j) "Person" includes any individual, partnership, association,
48-50 firm, or corporation.

51 (k) "Distributor" means any person who imports, consigns,
52 manufactures, produces, compounds, mixes, or blends commercial
53 fertilizer or soil conditioner or who offers for sale, sells, barter, or
54 otherwise supplied such products in this State.

55 (l) "Licensee" means a person who is licensed, or is required to
56 be licensed, to distribute commercial fertilizers or soil conditioners
57 under the provisions of this act.

58 (m) "Manufacturing facility" means any place where a com-
59 mercial fertilizer or soil conditioner is manufactured, produced,
60 compounded, mixed, blended, or in any way altered chemically or
61 physically.

62 (n) "Label" means the display of all written, printed, or graphic
63 matter on the immediate container or a statement accompanying a
64 commercial fertilizer or soil conditioner.

65 (o) "Labeling" means all written, printed, or graphic matter on
66 or accompanying any commercial fertilizer or soil conditioner, or
67 the contents of any advertisements, brochures, posters, or television

68 or radio announcements used in promoting the sale of such com-
69 mercial fertilizer or soil conditioner.

70 (p) "Ton" means a net weight of 2,000 pounds avoirdupois.

71 (q) "Per cent" or "percentage" refers to the percentage by
72 weight.

73 (r) "Department" means the New Jersey Department of Agri-
74 culture and includes the State Board of Agriculture, the Secretary
75 of Agriculture, the State Chemist, and all employees and agents
76 thereof.

77 (s) "State board" means the State Board of Agriculture of New
78 Jersey.

79 (t) "Secretary" means the Secretary of Agriculture of New
80 Jersey.

81 (u) "State Chemist" means the person appointed by the State
82 board, subject to the supervision of the secretary, for the purpose
83 of administering this act.

1 4. The State Board of Agriculture may adopt additional defini-
2 tions by regulations in accordance with section 33 of this act.
3 Definitions of ingredients adopted by regulation shall be derived
4 from authoritative publications and sources, such as those of the
5 Association of American Plant Food Control Officials.

1 5. Every person who owns or operates a manufacturing facility
2 in this State or under whose name commercial fertilizers or soil con-
3 ditioners are distributed in this State shall obtain a license to
4 manufacture or distribute such products.

1 6. The minimum annual license fee shall be \$125.00. In the case
2 of each person who owns or operates more than one manufacturing
3 facility within this State, there shall be an additional annual license
4 fee of \$125.00 for each such additional manufacturing facility. In
5 the case of each person who owns or operates 2 or more manu-
6 facturing facilities located outside of New Jersey which distribute
7 commercial fertilizers or soil conditioners within this State, there
8 shall be an additional annual license fee of \$125.00 covering all
9 such manufacturing facilities. Fees collected pursuant to this
10 section shall be forwarded to the State Treasurer.

1 7. Applications for licenses shall be submitted to the State
2 Chemist on forms furnished by his office and shall be accompanied
3 by the appropriate fee. Upon approval by the State Board of
4 Agriculture, a license shall be issued to the applicant. All licenses
5 shall expire on June 30 of each year.

1 8. A person applying for a license to distribute specialty fer-
2 tilizers shall, at the time of submitting his application, furnish the

3 State Chemist with a label or facsimile thereof for each brand and
4 grade of specialty fertilizer.

1 9. A person applying for a license to manufacture or distribute
2 soil conditioners shall, at the time of submitting his application,
3 furnish the State Chemist with a label or facsimile thereof for each
4 soil conditioner. The State Board of Agriculture may require that
5 the application for a license be accompanied by authentic experi-
6 mental evidence to substantiate claims made for a soil conditioner.

1 10. Any commercial fertilizer distributed in this State in con-
2 tainers shall have placed on or affixed to the container a label
3 setting forth in clearly legible and conspicuous form the following
3A information:

4 (a) The net weight or other measure prescribed by regulation.

5 (b) The brand and grade.

6 (c) The guaranteed analysis, in the following order and form:

7	(1) Total nitrogen (N)	%
8	Available phosphoric acid (P_2O_5)	%
9	Soluble potash (K_2O)	%

10 (2) For unacidulated mineral phosphatic materials and
11 basic slag, bone, tankage and other organic phosphatic ma-
12 terials, the total phosphoric acid or the degree of fineness or
13 both may also be guaranteed.

14 (3) Guarantees for plant nutrients other than nitrogen,
15 available phosphoric acid, and soluble potash may be permitted
16 or required by regulation. The guarantees for such other
17 nutrients shall be expressed in the form of the element. The
18 sources of such other nutrients (including, but not limited to,
19 oxides, salts, and chelates) may be required to be stated on
20 the application for a license and may be required to be in-
21 cluded as a parenthetical statement on the label. Other bene-
22 ficial substances or compounds determinable by laboratory
23 methods may also be required to be guaranteed by regulations
24 adopted by the State Board of Agriculture with the advice of
25 the Director of the Agricultural Experiment Station. When
26 any plant nutrients or other substances or compounds are
27 guaranteed they shall be subject to inspection and analysis in
28 accordance with methods and procedures prescribed by regu-
29 lation.

30 (d) The name and address of the licensee.

1 11. For each kind of commercial fertilizer distributed in bulk in
2 this State, a written or printed statement of the information re-
3 quired by section 10 of this act shall accompany each delivery and
4 be supplied to the customer at the time of delivery.

1 12. A customer formulated mix shall be designated "customer
2 formulated mix" and, in lieu of the requirements of sections 10
3 and 11 of this act, shall be labeled to show the net weight, guaran-
4 teed analysis, and the name and address of the licensee and the
5 customer.

1 13. A specialty fertilizer must be labeled as provided in section
2 10 of this act, and additional items may be required by regulation.

1 14. Any soil conditioner distributed in this State in containers
2 shall have placed on or affixed to the container a label setting forth
3 in clearly legible and conspicuous form the following information:

4 (a) The net weight or other measure prescribed by regulation.

5 (b) The brand.

6 (c) An accurate statement of composition and purpose.

7 (d) The name and address of the licensee.

1 15. For each kind of soil conditioner distributed in bulk in this
2 State, a written or printed statement of the information required
3 by section 14 of this act shall accompany each delivery and be
4 supplied to the customer at the time of delivery.

1 16. Each licensee shall pay to the Department of Agriculture
2 for all commercial fertilizers and soil conditioners distributed in
3 this State an inspection fee at the rate of \$0.15 per ton on all ton-
4 nage in excess of 10 tons per semiannual statement. Fees so col-
5 lected by the department shall be forwarded to the State Treasurer.

6 Sales to persons owning or operating manufacturing facilities
7 or exchanges between such persons are exempted from the inspec-
8 tion fee.

1 17. Every person who distributes a commercial fertilizer or soil
1A conditioner in this State shall file with the State Department of Ag-
2 riculture, on a form furnished by the State Chemist, semiannual
3 reports for the periods ending December 31 and June 30, setting
4 forth the number of net tons of soil conditioner or of commercial
5 fertilizer by grade and form (that is, bags, bulk, liquid, or other
6 forms) distributed in this State during such ½-year period. The
7 report shall be due on or before the end of the month following
8 the close of each period and shall be accompanied by payment of
9 the inspection fee required under section 16 of this act. Informa-
10 tion furnished under this section shall not be disclosed in such a
11 way as to divulge the operation of any person.

1 18. When the State board, after public hearing following due
2 notice, finds it desirable to obtain or disseminate more detailed
3 distribution statistics, it may by regulation prescribe a more com-
4 prehensive system of reporting.

1 19. If a licensee fails to file a tonnage report and to pay the
2 inspection fee within 60 days after the end of the semiannual period,
3 a collection fee of 10% of the amount due, but not less than \$10.00
4 in any event, shall be assessed against the licensee, and the amount
5 of fees due shall constitute a debt against the licensee. In the event
6 that a licensee fails to file the tonnage report and to pay the in-
7 spection fee, the Department of Agriculture may assess the amount
8 due on the basis of previous tonnage reports filed.

1 20. When the distribution of a commercial fertilizer or soil con-
2 ditioner involves sales or distribution to one or more intermediate
3 distributors before sale or distribution to the consumer, the person
4 who distributes to a nonlicensee is required to report the tonnage
5 and pay the inspection fee, unless the report and payment have
6 been made by a prior licensee.

1 21. It shall be the duty of the Department of Agriculture to
2 sample, inspect, make analyses of, and test commercial fertilizers
3 and soil conditioners distributed within this State at such time and
4 place and to such an extent as it may deem necessary to determine
5 whether such products are in compliance with the provisions of
6 this act. The department is authorized to enter upon any public
7 or private premises or carriers during regular business hours in
8 order to have access to commercial fertilizers and soil conditioners
9 and to records relating to their distribution, subject to the provi-
10 sions of this act and the rules and regulations adopted by the State
11 Board of Agriculture pursuant thereto.

1 22. The methods of analysis and sampling utilized under section
2 21 of this act shall be adopted by the State Board of Agriculture
3 on the basis of authoritative sources such as publications of the
4 Association of Official Analytical Chemists.

1 23. The Department of Agriculture, in determining for admin-
2 istrative purposes whether any commercial fertilizer or soil con-
3 ditioner is in violation of this act, shall base such determination
4 solely upon official samples as defined in subsection 3(i) and ob-
5 tained and analyzed in accordance with sections 21 and 22.

1 24. The results of an analysis of a sample of any commercial
2 fertilizer or soil conditioner which indicates a deficiency shall be
3 forwarded promptly by the State Chemist to the licensee. Upon
4 request and within 15 days of the date the analysis report is for-
5 warded, the State Chemist shall furnish to the licensee a portion
6 of any sample. If within 15 days after the forwarding of the analy-
7 sis report indicating a deficiency no adequate evidence contradict-
8 ing the analysis report is made available to the State Chemist, the

9 report of the sample analysis shall become official and may be sub-
10 mitted to the purchaser.

1 25. If an official analysis shows that a commercial fertilizer is
2 deficient in one or more of its guaranteed primary plant nutrients
3 (nitrogen, available phosphoric acid, and soluble potash) beyond
4 the investigational allowance as established by regulation or if the
5 over-all index value of the fertilizer is below the level established by
6 regulation, a penalty of 3 times the commercial value of such de-
7 ficiency shall be assessed by the State Chemist against the licensee.

1 26. For the purpose of determining the commercial values to be
2 applied under section 25 of this act, the State Board of Agriculture
3 shall determine and publish annually the values per pound of nitro-
4 gen, including water insoluble nitrogen, available phosphoric acid,
5 soluble potash, and other plant nutrients as determined by the
6 State board, in commercial fertilizers in this State. The values so
7 determined and published shall be used in determining and assess-
8 ing penalties.

1 27. All penalties assessed under section 25 of this act shall be
2 paid to the purchaser, or to a consumer who thereafter received
3 possession of the lot represented by the sample analyzed, within 60
4 days after the date of notice from the State Chemist to the licensee.
5 Receipts shall be obtained and forwarded promptly to the State
6 Chemist by the licensee. If the purchaser or consumer cannot be
7 found, the amount of the penalty shall be paid to the State
8 Treasurer.

1 28. Nothing contained in this act shall prevent any person from
2 appealing to a court of competent jurisdiction for relief from an
3 assessment imposed under section 25 of this act.

1 29. If an official report of a sample analysis shows that a com-
2 mercial fertilizer or soil conditioner is deficient beyond the investi-
3 gational allowance as established by regulation in any constituents
4 guaranteed pursuant to paragraph 10(e)(3) of this act, the penal-
5 ties prescribed by regulation adopted by the State Board of Agri-
6 culture shall be applicable.

1 30. No person shall distribute a misbranded product. A commer-
2 cial fertilizer or soil conditioner shall be deemed to be misbranded:

- 3 (a) If its labeling is false or misleading in any particular.
- 4 (b) If it is distributed under the name of another product.
- 5 (c) If it is not labeled in accordance with any applicable provi-
6 sions of sections 10, 11, 12, 13, 14 and 15 of this act and of regula-
7 tions prescribed under this act.

8 (d) If it purports to be or is represented as a commercial ferti-
 9 lizer, or is represented as containing a plant nutrient or commercial
 10 fertilizer, unless such plant nutrient or commercial fertilizer con-
 11 forms to the definitions or terms prescribed by regulation. In the
 12 adoption of such regulations due regard shall be given to commonly
 13 accepted definitions and official fertilizer terms such as those issued
 14 by the Association of American Plant Food Control Officials.

1 31. No person shall distribute an adulterated product. A com-
 2 mercial fertilizer or soil conditioner shall be deemed to be adulter-
 3 ated:

3A (a) If it contains any deleterious or harmful ingredient in suffi-
 4 cient amount to render it injurious to plant life when applied in
 5 accordance with directions for use on the label, or if adequate warn-
 6 ing statements or directions for use, which may be necessary to
 7 protect plant life, are not shown on the label.

8 (b) If its composition falls below or differs from that which it is
 9 purported to possess by its labeling.

10 (c) If it contains unwanted crop seed or weed seed.

1 32. The State Board of Agriculture shall publish in such form
 2 and as it may deem proper:

3 (a) At least once every 6 months, information concerning the
 4 distribution of commercial fertilizer and soil conditioners.

5 (b) At least once each year, results of analyses based on official
 6 samples of commercial fertilizer distributed within the State as
 7 compared with the guaranteed analyses prescribed under section 10.

1 33. The State Board of Agriculture, after public hearing and
 2 due notice, in accordance with the Administrative Procedure Act
 3 (P. L. 1968, c. 410, C. 52:14B-1 et seq.), may adopt such rules and
 4 regulations as it deems necessary to carry into effect the full in-
 5 tent and purposes of this act.

1 34. The State Board of Agriculture may revoke, suspend, or re-
 2 fuse to renew the license of any licensee or refuse to issue a license
 3 to a person under this act upon finding that the licensee or applicant
 4 has violated any provision of this act or of the rules and regulations
 5 adopted thereunder. No license shall be revoked, suspended, or
 6 refused until the licensee or applicant shall have been afforded an
 7 opportunity for a hearing before the State board or such person or
 8 persons as the State board may designate to conduct such hearings.

1 35. The State Board of Agriculture may issue and enforce a
 2 written "stop sale, use, or removal" order to the owner or custodian
 3 of any lot of commercial fertilizer or soil conditioner, or material
 4 purported to be commercial fertilizer or soil conditioner, when the

5 State Chemist finds that said material is being offered or exposed
6 for sale in violation of any provision of this act or any rule or
7 regulation adopted thereunder. Such order may require that the
8 material be held at a designated place until the violation has been
9 corrected and written authorization for removal has been received
10 from the Department of Agriculture. The State Chemist shall
11 authorize removal of commercial fertilizer or soil conditioner so
12 held whenever the requirements of this act have been met and any
13 identifiable costs and expenses incurred by the department in con-
14 nection with this action, due to a violation, have been paid.

1 36. Any lot of commercial fertilizer or soil conditioner which is
2 in violation of this act shall be subject to seizure on complaint of the
3 State Board of Agriculture to a court of competent jurisdiction in
4 the area in which said product is located. In the event the court
5 finds the product to be in violation of this act and orders the con-
6 demnation of said product, it shall be disposed of in any manner
7 consistent with the quality of the product and the laws of the State:

8 Provided, that in no instance shall the disposition of said com-
9 mercial fertilizer or soil conditioner be ordered by the court without
10 first affording the owner an opportunity to apply to the court for
11 release of the product or for permission to process or relabel the
12 product to bring it into compliance with this act.

1 37. Any violation or threatened violation of any provision of this
2 act or of any rule or regulation adopted thereunder may be re-
3 strained by the Superior Court in an action brought for such pur-
4 pose by the Attorney General on behalf of the State Board of
5 Agriculture.

1 38. Any person convicted of violating any provision of this act or
2 of any rule or regulation adopted thereunder other than a viola-
2A tion involving a plant nutrient deficiency shall be subject to a
3 penalty of not less than \$25.00 nor more than \$100.00 for the first
4 offense and not less than \$100.00 nor more than \$500.00 for any sub-
5 sequent offense within a 3-year period. The penalty shall be col-
6 lected and enforced in summary proceedings under the Penalty
7 Enforcement Law (N. J. S. 2A:58-1 et seq.) in a county court or
8 county district court.

1 39. Upon receiving any information of a violation of any provi-
2 sion of this act or of any rule or regulation adopted thereunder, the
3 Secretary or any agent designated by him for such purpose, is em-
4 powered to hold hearings upon said violation and, upon finding the
5 violation to have been committed, to assess a penalty against the
6 violator in such amount, not to exceed the maximum limit set forth
7 in section 38, as the secretary deems proper under the circum-

8 stances. If the violator pays such penalty as settlement, no further
9 prosecution shall be had upon that violation. Payment of such a
10 penalty shall be deemed equivalent to a conviction for violation of
11 this act.

1 40. Nothing in this act shall be construed as requiring the State
2 Chemist or the Department of Agriculture to report a minor viola-
3 tion for prosecution or seizure proceedings when the State Chemist
4 determines that the public interests will best be served by a suitable
5 notice of warning in writing.

1 41. Nothing in this act shall be construed to apply to sales or
2 exchanges of commercial fertilizer or soil conditioners between
3 importers, manufacturers, or manipulators who mix fertilizer ma-
4 terials for sale or as preventing the free and unrestricted shipments
5 of commercial fertilizer or soil conditioner to manufacturers or
6 manipulators who have been licensed under this act.

1 42. If any provision of this act, or any application of any pro-
2 vision, is held invalid, the invalidity shall not affect other applica-
3 tions of the provision, or other provisions of the act, which reason-
4 ably can be given effect despite the invalidity. To this end, the
5 provisions of this act are hereby declared to be severable.

1 43. Sections 4:9-1 through 4:9-15 of the Revised Statutes are
2 repealed.

1 44. This act shall take effect July 1 next following approval, but
2 all actions necessary and appropriate to enable this act to become
3 fully effective on said date may be taken as though this act were
4 effective immediately.

STATEMENT

This bill provides for a modern approach to fertilizer enforce-
ment. It replaces a 1912 act and increases the income derived from
license and tonnage fees to the State Department of Agriculture
from approximately \$35,000.00 to \$58,000.00 annually. A provision
is included for the reimbursement to farmers and other consumers
for nutrient deficiencies in fertilizers equal to three times the
monetary value of the deficiency.

This legislation is similar to the model fertilizer bill of the
Association of American Plant Food Control Officials and follows
closely the legislation on this subject in nearby states.

Numerous meetings and conferences have been held with all
interested groups in drafting this legislation during the past year.
The proposals embodied in this bill have the endorsement of The
Plant Food Educational Society of New Jersey and The National
Plant Food Institute, Washington, D. C.

FISCAL NOTE TO
ASSEMBLY, No. 270

STATE OF NEW JERSEY

DATED: FEBRUARY 19, 1970

Assembly Bill No. 270 is designated the "New Jersey Commercial Fertilizer and Soil Conditioner Act of 1970."

The Department of Agriculture estimates that enactment of this legislation would produce a net revenue of \$23,000.00 in each of the fiscal years 1970-71 and 1971-72.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

ASSEMBLY COMMITTEE AMENDMENT TO
ASSEMBLY, No. 270

—•—
STATE OF NEW JERSEY
—•—

ADOPTED APRIL 9, 1970

Amend page 1, section 3, line 20, after "include", insert "decomposed organic material having an ash content not exceeding 25% by dry weight,".