

No. 610, S.]

[Published August 17, 1951.

**CHAPTER 729.**

AN ACT to repeal 94.66; to renumber 94.665; to repeal and recreate 94.64 and 94.65 and to create 20.60 (8) of the statutes, relating to the registration and analysis of commercial fertilizers, providing a penalty and making an appropriation.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 20.60 (8) of the statutes is created to read:

20.60 (8) FERTILIZERS. On July 1, 1951, \$20,000 and annually, beginning July 1, 1952, \$20,000, for the inspection, sampling and analysis, investigations, demonstrations and other necessary work in carrying out the provisions of section 94.64. Of this appropriation there is allotted for the following purposes:

	1951-1952	1952-1953
Personal services .....	\$7,020	\$7,310
Materials and expense.....	3,980	3,990
Capital outlay .....	9,000	8,700

SECTION 2. 94.64 of the statutes is repealed and recreated to read:

94.64 COMMERCIAL FERTILIZER. (1) DEFINITIONS. When used in this section:

(a) "Commercial fertilizer" or "plant food" includes both mixed fertilizer or fertilizer materials.

(b) "Fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures and sludge sold at sewage plants at retail.

(c) "Mixed fertilizer" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth, with or without inert materials.

(d) "Distributor" means any person who offers for sale, sells, barter, or otherwise supplies commercial fertilizers.

(e) The terms "sell", "sale" or "sold" include delivering, shipping, consigning, exchanging, offering or exposing for sale, or having in possession with intent to sell.

(f) "Grade" means the minimum percentages of total nitrogen, available phosphoric acid, and soluble potash stated in the order given in this paragraph and, when applied to mixed fertilizers, shall be in whole numbers only. For fertilizer materials it shall include the common name.

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

(h) "Official sample" means any sample of commercial fertilizer taken by an authorized agent of the department according to methods prescribed by this section.

(i) "Ton" means a net ton of 2,000 pounds avoirdupois.

(j) The terms "per cent" and "percentage" mean the percentage by weight.

(k) "Specialty fertilizer" means any mixed fertilizer distributed principally for use on gardens, lawns and ornamental plants, including fertilizers used for research or experimental purposes.

(2) REGISTRATION. (a) No distributor shall sell any grade of commercial fertilizer unless it has been registered with the department. Application for registration shall be on a form furnished by the department and shall be accompanied by a fee of \$25 for each grade to be sold. All registrations expire on June 30 of each year. The application shall disclose the following information:

1. The name and address of the distributor guaranteeing registration.
2. The grade and brands applicable to each grade.
3. The guaranteed analysis showing the minimum percentage of plant food in the following order and form:

Total nitrogen .....	per cent
Available phosphoric acid.....	per cent
Soluble potash .....	per cent

Unacidulated mineral phosphate materials and basic slag shall be guaranteed as to both total and available phosphoric acid, and the percentage passing through a standard 200 mesh screen; the available phosphoric acid content shall be stated as zero (0) if none is guaranteed. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphoric acid need be guaranteed. In the case of a mixed fertilizer to be labeled or otherwise represented as suitable for use as tobacco fertilizer, a guarantee that the chlorine content does not exceed 2 per cent must be given.

4. The minimum percentages of each other plant food constituent if guaranteed to be present. In case boron is guaranteed both the percentage of soluble boron, elemental basis, and its equivalent in pounds of borax (sodium tetraborate, 10H<sub>2</sub>O) per ton shall be stated. If soluble boron is present in amounts of 5 pounds of such borax equivalent per ton or more, the presence shall be declared as stated above.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this section by a person entitled to do so and such registration is then in effect.

(3) LABELING. (a) Any commercial fertilizer sold in this state in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data, in written or printed form, required by subparagraphs 1, 2, 3, and 4 of paragraph (2) (a) printed either (1) on tags to be affixed to the end of the package midway between the ears or (2) directly on the package in which case for bags containing 50 pounds or more the grade shall appear also on the end or side of the package in type that is plainly legible. The size of the grade figures (such as 10-10-10) shall be at least as large as any others which have reference to analysis. The guarantee of total nitrogen, total and available phosphoric acid and soluble potash shall be shown in type of equal prominence under the heading "guaranteed analysis". The guarantee of any other plant food constituents shall be separately shown following the heading "additional guarantees". With the acceptance of registration, the department shall issue a concise and

complete warning statement to appear on the bag, tag or container if in the opinion of the department such cautions and instructions are deemed necessary for consumer protection.

(b) For each grade sold in bulk, the net weight and the data, in written or printed form, in duplicate, as required by paragraph (a) shall accompany delivery and be supplied to each and every purchaser.

(4) **TONNAGE FEE.** (a) There shall be paid to the department for all commercial fertilizers sold or distributed in this state an inspection fee at the rate of 5 cents per ton; provided, that products sold to manufacturers or exchanged between them are hereby exempted when used exclusively for manufacturing purposes.

(b) Payment of the inspection fee levied by paragraph (a) of this subsection shall be made on the basis of semiannual tonnage reports subscribed and sworn to before a notary. The tonnage reports shall cover the semiannual periods ending June 30 and December 31 of each year and shall be filed with the department not later than 30 days (which may be extended for cause an additional 30 days, on written request to the department) after the close of each semi-annual period. Remittance to cover the inspection fee at the rate prescribed in paragraph (a) shall accompany each tonnage report; provided also that each tonnage report shall grant to the department permission to verify the records upon which such statement of tonnage is based. When more than one distributor is involved in the distribution of a commercial fertilizer, the one which sells to the ultimate dealer or consumer in Wisconsin is responsible for reporting the tonnage and paying the inspection fee.

(5) **INSPECTION.** (a) It shall be the duty of the department to sample, inspect and make analyses of commercial fertilizers sold within this state at such time and place and to such an extent as may be necessary to determine whether such commercial fertilizers are in compliance with the provisions of this section. The department is authorized to stop vehicles transporting fertilizer for the purpose of sampling the load and verifying the label statement accompanying such load.

(b) An official fertilizer sample shall be one drawn, from a lot or shipment of fertilizer sold or exposed for sale, in this state in the manner prescribed by the association of official agricultural chemists. In sampling a lot of commercial fertilizer packaged in small containers (less than 10 pounds each) a single package may constitute the official sample.

(c) The methods of analysis shall be those adopted by the association of official agricultural chemists unless none are provided, in which case the methods prescribed by the department shall be used.

(d) At the request of the purchaser the deliverer of any load or lot of each grade of bulk fertilizer shall, in the presence of the purchaser or his representative, draw a sample for analysis. Each sample shall consist of a composite of at least 3 vertical cores. Such sample, together with a copy of the grade certificate, shall be packed and sealed in an individual tamper-proof container in the presence of the purchaser or his representative and given to him for mailing to the department laboratory at his option. The department, however, need not analyze more of such samples than the equivalent of 10 per cent of official samples analyzed under this statute.

(6) **MINIMUM PLANT FOOD CONTENT.** No person shall sell any superphosphate containing less than 18 per cent available phosphoric acid, nor any rock phosphate or material of similar source or origin containing less than 18 per cent of total phosphoric acid; and no person shall sell any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid and soluble potash totals less than 24 per cent, nor any natural mineral fertilizer in which the sum of such guarantees totals less than 15 per cent. If an acute fertilizer shortage should occur the department shall have the authority to reduce the minimum requirement for mixed fertilizers for the duration of such shortage. The provisions of this subsection shall not apply to specialty fertilizers.

(7) **MISBRANDING.** It shall be unlawful to sell, offer for sale or distribute a misbranded commercial fertilizer in this state. A commercial fertilizer is misbranded if any of the statements on the container or in any advertising or promotional matter issued by a distributor are false or misleading or are in conflict with registration representations.

(8) **STATISTICAL REPORTS.** Semiannually each person registering commercial fertilizer under this section shall furnish the department with a confidential written statement of the tonnage of each grade of fertilizer sold by him in the state. Said statements shall include all sales for the periods of July 1 to December 31 and of January 1 to June 30 of each year. The department may cancel the registration of any person failing to comply with this subsection if the above statements are not made within 30 days from date of the close of each period. No tonnage payments, tonnage reports or information

furnished under this section shall be disclosed in such a way as to divulge the operations of any person.

(9) PUBLICATION. The department shall publish at least annually, in such form as it may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold within the state as compared with the analyses guaranteed under subsections (2) and (3); provided that the information concerning production and use of commercial fertilizers shall be shown separately for the periods July 1 to December 31 and January 1 to June 30 of each year, and that no disclosure shall be made of the operations of any person.

(10) STOP SALE ORDERS. It shall be the duty of the department to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer which is sold in violation of any of the provisions of this section or any regulation issued thereunder, until the same has been complied with and said commercial fertilizer is released in writing by the department.

(11) SEIZURE. Any lot of commercial fertilizer not in compliance with the provisions of this section shall be subject to seizure on complaint of the department made to a court of competent jurisdiction. In the event the court finds that the commercial fertilizer is in violation of this section and orders the seizure thereof, it shall be disposed of in any manner consistent with the character of the commercial fertilizer and the laws of this state; provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said fertilizer or for permission to process or relabel said commercial fertilizer under supervision of the department in compliance with this section.

(12) INJUNCTION. Upon petition of the department any court having equity jurisdiction may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this section or any rule or regulation promulgated under it notwithstanding the existence of other remedies at law.

(13) PENALTIES. (a) Any person who violates any of the provisions of this section or any rule or regulation issued thereunder is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$50 for the first offense and by a fine of not to exceed \$200 for any subsequent conviction.

(b) Nothing in this section shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings, minor violations of the section when it believes that the public interests will be best served by a suitable notice of warning in writing.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(14) EXEMPTIONS. Nothing in this section shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer material for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers or manipulators who have registered their brands as required by the provisions of this section.

SECTION 3. 94.65 of the statutes is repealed and recreated to read:

94.65 CULTURES OF MICRO-ORGANISMS. Before any person shall sell or offer for sale any pure or mixed culture of micro-organisms or other material to be used for promoting directly or indirectly the growth of higher plants, he shall file with the department a statement under oath specifying the composition of the substance and the kinds of micro-organisms contained therein which promote the growth of higher plants, and shall secure a permit from the department. Permits may be denied, suspended or revoked on such products which are considered to be of questionable value. Application for permits shall be made on a form supplied by the department and shall be accompanied by a fee of \$25 for each material carrying a distinguishing brand or trade name. All permits shall expire on December 31 next following the date of issuance.

SECTION 4. 94.66 of the statutes is repealed.

SECTION 5. 94.665 of the statutes is renumbered 94.66.

SECTION 6. The state department of agriculture shall, at the time registration fees are made payable by section 94.64 of the statutes, credit each applicant, required thereby to register a grade of commercial fertilizer, with the unexpired balance of any fee paid for the registration of such grade during the preceding 12 months.

SECTION 7. This act shall take effect July 1, 1951.

Approved August 3, 1951.