

Article 2A.

North Carolina Soil Additives Act of 1977.

§ 106-50.28. Short title.

This Article shall be known as the North Carolina Soil Additives Act of 1977. (1977, c. 233, s. 1.)

§ 106-50.29. Administration of Article.

This Article shall be administered by the Commissioner of Agriculture of the State of North Carolina. (1977, c. 233, s. 2.)

§ 106-50.30. Definitions.

Words used in this Article shall be defined as follows:

- (1) "Adulterated" means any soil additive:
 - a. Which contains any deleterious substance in sufficient quantity to be injurious to desirable terrestrial or aquatic organisms when applied in accordance with the directions for use shown on the label; or
 - b. Whose composition differs from that offered in support of registration or shown on the label; or
 - c. Which contains noxious weed seed.
- (2) "Bulk" means in nonpackaged form.
- (3) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina or his designated agent.
- (4) "Distribute" means to import, consign, offer for sale, sell, barter, exchange, or to otherwise supply soil additives to any person in this State.
- (5) "Distributor" means any person who imports, consigns, sells, offers for sale, barter, exchanges, or otherwise supplies soil additives in this State.
- (6) "Label" means the display of written, printed, or graphic matter upon the immediate container of, or accompanying soil additives.
- (7) "Labeling" means all written, printed, or graphic matter accompanying any soil additive and all advertisements, brochures, posters, television, radio or oral claims used in promoting its sale.
- (8) "Percent" or "percentage" means the parts per hundred by weight.
- (9) "Person" means individuals, partnerships, associations, corporations or other legal entity.
- (10) "Product name" means the designation under which a soil additive is offered for distribution.
- (11) "Registrant" means any person who registers a soil additive under the provisions of this Article.
- (12) "Sale" means any transfer of title or possession, or both, exchange or barter of tangible personal property, conditioned or otherwise for a consideration paid or to be paid, and this shall include any of said transactions whereby title or ownership is to pass and shall further mean and include any bailment, loan, lease, rental, or license to use or consume tangible personal property for a consideration paid in which possession of said property passes to the bailor, borrower, lessee, or licensee.

- (13) "Sell" means the alienation, exchange, transfer or contract for such transfer of property for a fixed price in money or its equivalent.
- (14) "Soil additive" means any substance intended for changing the characteristics of soil or other growth medium for purposes of:
 - a. Increasing the biological population, or
 - b. Increasing penetrability of water or air, or
 - c. Increasing water holding capacity, or
 - d. Increasing root development, or
 - e. Alleviating or decreasing soil compaction, or
 - f. Otherwise altering the soil or other medium in such manner that the physical and biological properties are materially enhanced.
 - g. The term "soil additive" does not include any substance for which nutritional claims are made, such as, but not limited to, commercial fertilizers, liming materials, or unmanipulated vegetable or animal manures. It also specifically does not include rhizobial inoculants, pine bark, peat moss, other unfortified mulches, or pesticides. (1977, c. 233, s. 3.)

§ 106-50.31. Registration of additives.

Every soil additive distributed in North Carolina shall be registered with the Commissioner by the person whose name appears on the label on forms furnished by the Commissioner. The applicant shall furnish such information as the Commissioner may require. In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the soil additive. If no specific claims are made, the Commissioner may require proof of usefulness and value of the soil additive. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that such data be developed by a recognized research or experimental institution. The Commissioner may further require that such data be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. The Commissioner may reject any data not developed under such conditions and may rely on the advice of the Director of the North Carolina Agricultural Experiment Station in evaluating data for registration.

The registration fee shall be one hundred dollars (\$100.00) per year for each product. Registration shall expire on December 31, annually, unless an application for renewal has been received prior to the expiration date.

The application for registration shall include the following:

- (1) The name and address of the registrant;
- (2) Product name;
- (3) Guaranteed analysis;
 - a. Active ingredients (name of each ingredient and percent)
 - b. Inert ingredients (name of each ingredient and percent)
- (4) Directions for use;
- (5) Purpose of product.

The application shall be accompanied by the label for the product and all advertisements including brochures, posters, or other information promoting the product. The registrant is responsible for all guaranteed analysis and claims appearing on the label. (1977, c. 233, s. 4; 1989, c. 544, s. 8.)

§ 106-50.32. Labeling of containers.

Every soil additive container shall be labeled on the face or display side in readable and conspicuous form showing:

- (1) The product name;
- (2) The guaranteed analysis;
- (3) A statement of claim or purpose;
- (4) Adequate directions for use;
- (5) Net weight or volume;
- (6) Name and address of registrant. (1977, c. 233, s. 5.)

§ 106-50.33. When additive considered misbranded.

A soil additive shall be considered misbranded if:

- (1) Its label or labeling is false or misleading in any particular;
- (2) It is distributed under the name of another soil additive;
- (3) It is represented as a soil additive or is represented to contain a soil additive unless such soil additive conforms to the soil additive definition in this Article. (1977, c. 233, s. 6.)

§ 106-50.34. Records and reports of registrants.

Each registrant shall keep accurate records of his sales, and shall file a semiannual report covering the periods January 1 through June 30, and July 1 through December 31. Such reports shall be due within 30 days from the close of each period. If the report is not filed within the 30-day period or is false in any respect, the Commissioner may revoke the registration. For the purpose of auditing reports, each registrant shall make his records available for audit from time to time as the Commissioner may deem necessary. (1977, c. 233, s. 7.)

§ 106-50.35. Violations of Article.

It shall be a violation of this Article for any person:

- (1) To distribute an unregistered soil additive;
- (2) To distribute an unlabeled soil additive;
- (3) To distribute a misbranded soil additive;
- (4) To distribute an "adulterated" soil additive;
- (5) To fail to comply with a "stop sale, use or removal" order; or
- (6) To fail to submit semiannual reports. (1977, c. 233, s. 8.)

§ 106-50.36. Inspection and sampling of additives.

The Commissioner is authorized to enter upon any public or private property with permission or with a proper court order during normal business hours for the purpose of inspecting or sampling any soil additive to determine if such additive is being distributed in compliance with the provisions of this Article. In the examination of such samples, the Commissioner may rely on such tests as he may establish as necessary for the enforcement of this Article. (1977, c. 233, s. 9.)

§ 106-50.37. Stop sale, etc., orders.

The Commissioner may issue and enforce a written or printed stop sale, use, or removal order to the owner or custodian of any lot of soil additive, and hold at a designated place, any such lot of

soil additive which the Commissioner determines does not comply with the provisions of this Article. When such soil additive has been made to comply with the provisions of this Article, it shall then be released in writing by the Commissioner. (1977, c. 233, s. 10.)

§ 106-50.38. Injunctions.

The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this Article or regulations adopted hereunder, in the Superior Court of Wake County, or in the superior court of the county in which such violation occurs or is about to occur. (1977, c. 233, s. 11.)

§ 106-50.39. Refusal or revocation of registration.

The Commissioner shall refuse to register any soil additive which fails to comply with the provisions of this Article, and may revoke, after opportunity for a hearing, any registration, upon sufficient evidence that the registrant or any of his designated agents has used misleading, fraudulent, or deceptive practices in the distribution of any soil additive. (1977, c. 233, s. 12.)

§ 106-50.40. Rules and regulations.

The Board of Agriculture is authorized to promulgate and adopt, pursuant to Chapter 150B of the General Statutes of North Carolina, such rules and regulations as may be necessary to enforce the provisions of this Article. Such regulations may relate to, but shall not be limited to:

- (1) Methods of inspection and sampling;
- (2) Examination and analysis of samples;
- (3) Designation of ingredients;
- (4) Identity of product;
- (5) Monetary penalties for samples not meeting guarantees;
- (6) Acceptable ingredients for registration;
- (7) Labeling format. (1977, c. 233, s. 13; 1987, c. 827, s. 1.)

§ 106-50.41. Penalties.

Any person violating the provisions of this Article or the regulations adopted thereunder, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1977, c. 233, s. 14; 1993, c. 539, s. 739; 1994, Ex. Sess., c. 24, s. 14(c).)