

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1406

BY: VOSKUHL and MADDUX (Elmer)
of the HOUSE

and

TALIAFERRO of the SENATE

AS INTRODUCED

AN ACT RELATING TO AGRICULTURE; AMENDING 2 O.S. 1981,
SECTION 1452, 1453, 1454, 1455, 1456, 1457, 1458
AND 1459, AS AMENDED BY SECTION 4, CHAPTER 151,
O.S.L. 1986 (2 O.S. SUPP. 1990, SECTION 1459),
WHICH RELATE TO THE OKLAHOMA AGRICULTURAL LIMING
MATERIALS ACT; MODIFYING AND ADDING TO TERMS;
ADDING TO LABEL AND INVOICE RESTRICTIONS; REQUIRING
REGISTRATION OF CERTAIN PRODUCTS; PROVIDING
PROCEDURES; PROVIDING EXCEPTIONS; REQUIRING CERTAIN
INFORMATION TO BE AFFIXED TO CERTAIN CONTAINERS OR
OTHERWISE DISTRIBUTED TO CERTAIN PERSONS; PROVIDING
FOR ASSESSMENT OF CERTAIN PENALTIES; PROVIDING FOR
PAYMENT; MODIFYING ASSESSMENT FEE; MAKING FAILURE
TO PAY FEE SUBJECT TO STOP-SALE, REMOVAL ORDER OR
SEIZURE; CLARIFYING LANGUAGE; MAKING CERTAIN
ACTIONS UNLAWFUL; MAKING CERTAIN ANALYSES PRIMA
FACIE EVIDENCE; PROVIDING FOR ASSESSMENT AND
DEPOSIT OF ADMINISTRATIVE PENALTIES; PROVIDING FOR
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 2 O.S. 1981, Section 1452, is amended to read as follows:

Section 1452. As used in ~~this act~~ the Oklahoma Agricultural Liming Materials Act:

1. "Agricultural liming material" means a product whose calcium and magnesium compounds are capable of neutralizing soil acidity;

2. "Brand" means the term, designation, trademark, product name or other specific designation under which an individual agricultural liming material is offered for sale;

3. "Bulk" means liquid or solid liming material in a nonpackaged form;

4. "Burnt lime" means a material made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide;

5. "Calcium Carbonate Equivalent" (CCE) means the acid neutralizing capacity of an agricultural liming material expressed as weight percentage of calcium carbonate;

6. "Effective Calcium Carbonate Equivalent" (ECCE) is the percent of calcium carbonate equivalent (CCE) multiplied by the "fineness factor";

7. "Fineness" means the percentage by weight of the material which will pass U. S. standard sieves of specified sizes. The State Board of Agriculture shall promulgate ~~regulations~~ rules relating to fineness and shall be guided by the American Society for Testing Materials specification for sieve sizes;

8. "Fineness factor" is the degree of fineness of the liming material used and shall be determined as prescribed under rules ~~and~~ regulations;

9. "Hydrated lime" means a material made from burnt lime which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide and/or magnesium hydroxide;

10. "Industrial by-products" means any industrial waste or by-product containing calcium or calcium and magnesium in forms that will neutralize soil acidity;

11. "Label" means any written or printed matter on or attached to the package or on the delivery ticket or invoice which accompanies bulk shipments;

12. "Limestone" means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity;

13. "Marl" means a granular or loosely consolidated earthy material composed largely of sea shell fragments and calcium carbonate;

14. "Percent" or "percentage" means by weight; ~~and~~

15. "Person" ~~means~~ includes any individual, partnership, association, company, firm, corporation, manufacturer ~~or,~~ distributor, organized group of persons whether or not incorporated, or any other legal entity;

16. "Registrant" means the person, firm, or corporation registering agricultural liming materials pursuant to the provisions of the Oklahoma Agricultural Liming Materials Act;

17. "Board" means the Oklahoma State Board of Agriculture;

18. "Guarantor" means that person who is responsible to the Board for any claims or guarantees associated with the manufacture, distribution, and use of agricultural liming materials; and

19. "License" means a written document issued to a person by the Board which shows that the person has met all of the licensing requirements established by the Oklahoma Agricultural Liming Materials Act.

SECTION 2. AMENDATORY 2 O.S. 1981, Section 1453, is amended to read as follows:

Section 1453. A. Agricultural liming materials sold, offered or exposed for sale in the state shall have affixed to each package in a conspicuous manner on the outside thereof, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip or invoice, setting forth at least the following information:

1. The name and principal office address of the manufacturer or distributor;
2. The brand or trade name, if any, of the material;
3. The identification of the product as to the type of the agricultural liming material;
4. The net weight of the agricultural liming material; and
5. The minimum percentage of Effective Calcium Carbonate Equivalent (ECCE) guaranteed.

B. No information or statement shall appear on any package, label, delivery slip or advertising matter which is false or misleading to the purchaser as to the quality, analysis, type or composition of the agricultural liming material.

C. In the case of any material which has been adulterated subsequent to packaging, labeling or loading thereof and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of such adulteration therein.

D. At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statement required by this section for each brand of material.

E. Each separately identified product and/or each effective calcium carbonate equivalent shall be registered before being distributed in this state. The application for registration shall

be submitted to the Board on forms furnished. Upon approval a copy of the registration shall be furnished to the applicant. Such registration shall contain the labeling information as set forth in subsection A of this section. Registrations shall be permanent unless canceled by the registrant or by the Board.

F. A distributor shall not be required to register any brand of agricultural liming material which is already registered pursuant to the Oklahoma Agricultural Liming Materials Act by another person, providing the label does not differ in any respect.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1453.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any agricultural liming material offered for sale, sold, or distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form the information required by subsection A of Section 1453 of Title 2 of the Oklahoma Statutes, either:

1. on tags affixed to the end of the package between the ears or on the sewn end or both between the ears and on the sewn end; or
2. directly on the package in such manner as determined by the Board.

B. If distributed in bulk, a written or printed statement of the weight, as well as the information required by paragraphs 1, 2, 3, 5 and 6 of subsection A of Section 1453 of Title 2 of the Oklahoma Statutes, shall accompany delivery and be supplied to the purchaser.

SECTION 4. AMENDATORY 2 O.S. 1981, Section 1454, is amended to read as follows:

Section 1454. A. No agricultural liming material shall be sold or offered for sale in this state unless it complies with provisions of ~~this law~~ the Oklahoma Agricultural Liming Materials Act or rules and regulations promulgated hereunder thereto.

B. No agricultural liming material shall be sold or offered for sale in this state which contains toxic materials in quantities injurious to plants or animals.

C. If an analysis shows that a commercial agricultural lime material falls below the guaranteed analysis, the Board may require the payment of an administrative penalty to the consumer in the amount of the current value of the deficiency. All administrative penalties assessed under this section shall be paid to the consumer represented by the sample analyzed within thirty (30) days after the date of notice from the Board to the guarantor, receipts taken therefor and promptly forwarded to the Board. If such consumers cannot be found, the amount of the penalty shall be forwarded to the Board and be deposited in the State Board of Agriculture Revolving Fund.

SECTION 5. AMENDATORY 2 O.S. 1981, Section 1455, is amended to read as follows:

Section 1455. ~~A. Each separately identified product shall be registered before being distributed in this state. The application for registration shall be submitted to the State Board of Agriculture on forms furnished. Upon approval a copy of the registration shall be furnished to the applicant. Such registration shall contain the labeling information as set forth in subsection A of Section 3. Registrations shall be permanent unless canceled by the registrant or by the State Board of Agriculture.~~

~~B. A distributor shall not be required to register any brand of agricultural liming material which is already registered under this act by another person, providing the label does not differ in any respect.~~

~~C. It shall be unlawful for any person or firm to engage in the spreading of liming materials on properties belonging to others unless such person or firm has a current vendor's license issued by the State Board of Agriculture. Application for such license shall~~

be in the form prescribed by the ~~State Board of Agriculture~~ and shall state the name and address of the applicant and the number of spreader trucks or similar vehicles to be used by the applicant. The application shall be accompanied by an annual license fee of Twenty-five Dollars (\$25.00). Each license shall expire December 31 of each year.

SECTION 6. AMENDATORY 2 O.S. 1981, Section 1456, is amended to read as follows:

Section 1456. A. For the purpose of helping to defray the expenses of inspection and otherwise administering and carrying out the provisions of ~~this act~~ the Oklahoma Agricultural Liming Materials Act, an inspection fee ~~determined by rules and regulations and not to exceed~~ of ten cents (\$0.10) per ton shall be paid to the ~~State Board of Agriculture~~ on all agricultural liming material sold or distributed for use within this state. All such fees collected shall be deposited in the State Department of Agriculture ~~Trust~~ Revolving Fund. Manufacturers, importers and other guarantors distributing agricultural liming materials in the state shall file with the ~~State Board of Agriculture~~ not later than the last day of January and July of each year, a semiannual report on forms furnished by the ~~State Board of Agriculture~~ setting forth, by counties, the number of net tons of agricultural liming material distributed in this state during the preceding six (6) calendar months. Such report shall be accompanied by payment of the inspection fee. The ~~State Board of Agriculture~~ shall have authority to audit records of each person to determine the accuracy of said reports.

B. Any agricultural liming material on which the inspection fee has not been paid shall be subject to a stop-sale, removal order, or seizure.

~~B. C.~~ The ~~State Board of Agriculture~~ may publish and distribute semiannually or annually to each person, distributor, registrant,

licensee and other interested persons a report showing the tons of agricultural liming material sold in each county of Oklahoma. This report shall in no way divulge the operation of any registrant, distributor or licensee.

SECTION 7. AMENDATORY 2 O.S. 1981, Section 1457, is amended to read as follows:

Section 1457. The ~~State Board of Agriculture~~, who may act through its authorized agent, is authorized to sample, inspect, make analyses of and test agricultural liming materials distributed within this state as it may deem necessary to determine whether such agricultural liming materials are in compliance with the provisions of ~~this act~~ the Oklahoma Agricultural Liming Materials Act. The ~~State Board of Agriculture~~ through its authorized agent is authorized to enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material subject to the provisions of ~~this act~~ the Oklahoma Agricultural Liming Materials Act and ~~regulations~~ rules pertaining thereto, and to the records relating to their distribution.

B. The methods of analysis and sampling shall be those approved by the ~~State Board of Agriculture~~ as established by the Association of Official Analytical Chemists.

C. The results of official analysis of agricultural liming materials may be published annually by the ~~State Board of Agriculture~~.

SECTION 8. AMENDATORY 2 O.S. 1981, Section 1458, is amended to read as follows:

Section 1458. The ~~State Board of Agriculture~~ through its authorized agent may issue and enforce a written or printed "stop-sale order" to the owner or custodian of any agricultural liming materials, to hold such materials at a designated place when it finds said agricultural liming materials are being offered or

exposed for sale in violation of any of the provisions of ~~this act~~
the Oklahoma Agricultural Liming Materials Act or rules and
~~regulations~~ until ~~the law has been complied~~;

1. Such owner or custodian is in compliance with and said the
Oklahoma Agricultural Liming Materials Act; and

2. The agricultural liming materials are released in writing by
the ~~State Board of Agriculture~~ or its authorized agent~~;~~ or ~~said~~

3. The violation has been otherwise legally disposed of by
written authority.

The ~~State Board of Agriculture~~ or its authorized agent shall release
the agricultural liming materials when the requirements of the
provisions of ~~this act~~ the Oklahoma Agricultural Liming Materials
Act have been complied with and all costs and expenses incurred in
connection with the stop-sale order have been paid.

SECTION 9. AMENDATORY 2 O.S. 1981, Section 1459, as
amended by Section 4, Chapter 151, O.S.L. 1986 (2 O.S. Supp. 1990,
Section 1459), is amended to read as follows:

Section 1459. ~~(a) Any person convicted of violating any~~
~~provision of this act or the rules and regulations promulgated~~
~~hereunder shall be guilty of a misdemeanor~~

A. Any person, registrant, manufacturer, or agent who violates
any of the provisions of the Oklahoma Agricultural Liming Materials
Act or rules promulgated thereunder, upon conviction, shall be
guilty of a misdemeanor. In all prosecutions of the Oklahoma
Agricultural Liming Materials Act involving the composition of
agriculture lime, a certified copy of the official analysis
certified by the Board or the chemist in charge of making the
analysis shall be accepted as prima facie evidence.

B. If, after public hearing in accordance with the
Administrative Procedures Act, the Board shall find any person to be
in violation of the Oklahoma Agricultural Liming Materials Act, the
Board shall have the authority to assess an administrative penalty

of not less than One Hundred Dollars (\$100.00) and not more than One Thousand Dollars (\$1,000.00) for each violation.

~~(b)~~ C. If the ~~State Board of Agriculture~~ finds any deficient inspection fees due, as a result of an audit of the records of any person subject to the provisions of the Oklahoma Agricultural Liming Materials Act, the Board shall assess a penalty fee of ten percent (10%) maximum not to exceed Two Thousand Dollars (\$2,000.00) of amount due, or One Hundred Dollars (\$100.00), whichever is greater. The audit penalty shall be added to the deficient inspection fees due and payment made within thirty (30) days.

D. All administrative penalties collected pursuant to this section shall be deposited in the State Department of Agriculture Revolving Fund.

SECTION 10. AMENDATORY 2 O.S. 1981, Section 1460, is amended to read as follows:

Section 1460. The ~~State Board of Agriculture~~, after public notice and hearing, is empowered to promulgate and enforce rules ~~and regulations~~ for the administration of ~~this act~~ the Oklahoma Agricultural Liming Materials Act pursuant to the Administrative Procedures Act.

SECTION 11. This act shall become effective September 1, 1991.

43-1-5555 KSM