Reprinted
February 21, 2009

HOUSE BILL No. 1191

DIGEST OF HB 1191 (Updated February 20, 2009 12:34 pm - DI 52)

Citations Affected: IC 15-16.

Synopsis: Fertilizer law matters. Provides that the state chemist may allow the use of technologies or methods that are not specified in rules to handle or use ammonia and ammonia solutions. Makes the violation of certain agriculture ammonia laws a Class C misdemeanor (current law imposes a Class C infraction) and provides that the penalty applies for a knowing or intentional violation. Amends various definitions to specify that the terms apply to commercial fertilizer or fertilizer material. Provides that fertilizer material must have nutrient value. Requires containers that contain commercial fertilizer to have certain information on or affixed to the package. Provides that the members of the fertilizer advisory board who are not state employees are reimbursed for expenses under the travel policies of Purdue University. Requires the state chemist to adopt rules to establish certification and educational programs for certain fertilizer material applicators and transporters and fees for the certification and programs. Requires the fees to be deposited with the treasurer of Purdue University. Requires an annual financial report to be submitted to the governor. Allows the state chemist to impose civil penalties for violations of the commercial fertilizer laws. Authorizes the state chemist, on recommendation of the fertilizer advisory board, to adopt rules establishing a schedule of civil penalties that may be imposed. Makes technical and conforming changes. Repeals penalties for certain violations.

Effective: July 1, 2009.

Pearson, Friend, Pflum

January 12, 2009, read first time and referred to Committee on Agriculture and Rural Development.
February 17, 2009, amended, reported — Do Pass.
February 20, 2009, read second time, amended, ordered engrossed.

C o p y

Reprinted
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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1191

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 15-16-1-10, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) **Except as provided in subsection (d),** the state chemist shall adopt rules establishing the minimum safety standards for the design, construction, location, installation, and operation of equipment for storage, handling, use, and transportation (not otherwise regulated) of ammonia and ammonia solutions.

(b) The rules described in subsection (a) must be:

(1) reasonably necessary to protect the safety of the public, including persons handling or using the materials; and

(2) in substantial conformity with the current nationally accepted standards of safety that apply to the equipment described in subsection (a).

(c) The state chemist shall adopt the rules described in subsection (a) only after a notice and public hearing.

(d) The state chemist may allow the use of technologies or methods other than those specified in rules adopted under

subsection (a) if the technologies or methods provide similar protection to the public and persons handling or using ammonia or ammonia solutions.

SECTION 2. IC 15-16-1-14, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) A person who **knowingly or intentionally** violates this chapter commits a Class C ~~infraction.~~ **misdemeanor.**

(b) The prosecuting attorney of any judicial circuit in which a violation has occurred and to whom the state chemist has reported a violation shall institute the appropriate proceedings and prosecute the proceedings in a court.

(c) Before the state chemist reports a violation for prosecution as described in subsection (b), the state chemist shall give the person charged with a violation an opportunity to respond to the charges. The state chemist need not report for prosecution minor violations of this chapter if the state chemist believes that the public interest is best served by another action.

SECTION 3. IC 15-16-2-2, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. This chapter may not be construed:

(1) to restrict or avoid sales or exchanges of commercial fertilizers among importers, manufacturers, or blenders who mix **commercial** fertilizer ~~materials~~ for sale; or

(2) as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers or blenders who have registered their brands as required by this chapter.

SECTION 4. IC 15-16-2-3, AS ADDED BY P.L.120-2008, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. As used in this chapter, "blender" means a person or system engaged in the business of blending **commercial** fertilizer. ~~materials.~~

SECTION 5. IC 15-16-2-4, AS ADDED BY P.L.120-2008, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. As used in this chapter, "blending" means the physical mixing or combining:

(1) of one (1) or more ~~fertilizer materials~~ **commercial fertilizers** and one (1) or more filler materials;

(2) of two (2) or more ~~fertilizer materials~~ **commercial fertilizers;** or

(3) of two (2) or more ~~fertilizer materials~~ **commercial fertilizers** and filler materials;

including mixing through the simultaneous or sequential application of

C o p y

any of the combinations referred to in subdivision (1), (2), or (3) to produce a uniform mixture.

SECTION 6. IC 15-16-2-6, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. As used in this chapter, "brand" means a term, design, or trademark used in connection with at least one (1) grade of **commercial** fertilizer.

SECTION 7. IC 15-16-2-7, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. As used in this chapter, "bulk fertilizer" means a **commercial** fertilizer distributed in nonpackaged form.

SECTION 8. IC 15-16-2-9, AS ADDED BY P.L.120-2008, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. As used in this chapter, "custom blend" means a **commercial** fertilizer blended:

(1) according to specifications provided to a blender in a soil test nutrient recommendation; or

(2) to meet specific requests of a consumer (who is the end user) before blending.

SECTION 9. IC 15-16-2-11, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. As used in this chapter, "fertilizer material" means any substance containing nitrogen, phosphate, potash, or any recognized plant nutrient that: ~~is:~~

(1) **is** used for the plant nutrient content; and

(2) ~~designed to have~~ **has nutrient** value in promoting plant growth.

The term includes unmanipulated animal and vegetable manures.

SECTION 10. IC 15-16-2-13, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. As used in this chapter, "mixed fertilizer" means any combination or mixture of ~~fertilizer materials.~~ **commercial fertilizers:**

(1) designed for use; or

(2) claimed to have **nutrient** value;

in promoting plant growth.

SECTION 11. IC 15-16-2-18, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. As used in this chapter, "registrant" means a person who registers **commercial** fertilizer under this chapter.

SECTION 12. IC 15-16-2-20, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C o p y

JULY 1, 2009]: Sec. 20. As used in this chapter, "specialty fertilizer" means a **commercial** fertilizer distributed for nonfarm use.

SECTION 13. IC 15-16-2-23, AS ADDED BY P.L.120-2008, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 23. As used in this chapter, "use" means the placement or usage of ~~commercial~~ fertilizer **materials** on a targeted growing area.

SECTION 14. IC 15-16-2-25, AS ADDED BY P.L.120-2008, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25. (a) The Indiana fertilizer advisory board is established to:

(1) study the regulation of fertilizer **material;** and

(2) advise the state chemist on the administration of this chapter.

(b) The board consists of the following members:

(1) Two (2) representatives of the retail fertilizer industry.

(2) One (1) representative of fertilizer manufacturing, distributing, or manufacturing and distributing.

(3) Two (2) representatives of producers of agricultural crops.

(4) One (1) representative of the lawn care industry.

(5) One (1) representative of the Purdue School of Agriculture.

(6) One (1) representative of a public conservation organization.

(7) One (1) representative of the livestock industry.

(8) The president of the Indiana Plant Food and Agricultural Chemicals Association, who serves as a nonvoting member.

(9) One (1) representative of the department of environmental management, who serves as a nonvoting member.

(10) The fertilizer administrator for the office of the state chemist, who serves as a nonvoting member.

(11) The engineer specialist for the office of the state chemist, who serves as a nonvoting member.

(12) One (1) representative of the **Indiana state** department **of agriculture,** who shall serve as a nonvoting member.

(c) The state chemist shall appoint the voting members of the board, who serve for terms of four (4) years.

(d) Voting members of the board may be appointed for successive terms at the discretion of the state chemist.

SECTION 15. IC 15-16-2-30, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 30. **(a)** Each member of the board who is not a state employee is entitled to receive both: ~~of the following:~~

(1) the minimum salary per diem; ~~provided by IC 4-10-11-2.1(b).~~ **and**

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(2) reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties;

as provided in the ~~state~~ **Purdue University** travel policies and procedures established by the ~~Indiana department of administration and approved by the budget agency.~~ **Purdue University department of transportation and approved by the Purdue University vice president of business services.**

(b) Each member of the board who is a state employee is entitled to reimbursement for travel expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

SECTION 16. IC 15-16-2-31, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31. (a) Before distributing commercial fertilizer in Indiana, the person whose name appears on the label of each brand and grade of the **commercial** fertilizer must submit:

(1) an application for registration to the state chemist on a form furnished by the state chemist; and

(2) the appropriate filing fee set forth in subsection (b).

(b) The filing fee for **commercial** fertilizers sold in packages weighing more than twelve (12) pounds is twenty dollars ($20) for each grade of each brand. The filing fee for **commercial** fertilizers sold in packages weighing not more than twelve (12) pounds is fifty dollars ($50) for each grade of each brand.

(c) Upon approval of the application, the state chemist shall furnish a copy of the registration to the applicant.

(d) All registrations expire on June 30 each year.

(e) In addition to the appropriate filing fee set forth in subsection (b), a late filing fee equal to one hundred percent (100%) of the appropriate filing fee is assessed when:

(1) an application to renew the registration of a commercial fertilizer under this section is received after July 31; or

(2) a product that must be registered under this section is found to be in distribution before registration.

(f) An application under subsection (a) must include the following information:

(1) The name and address of the registrant.

(2) The brand and grade.

(3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:

C o p y

Total Nitrogen (N)	percent
Available Phosphate (P_2O_5)	percent
Soluble Potash (K_2O)	percent

(g) The minimum percentage of plant food in mixed fertilizers under subsection (f)(3) must be given in whole numbers only. However, the state chemist may allow fractional numbers to be used under subsection (f)(3) for specialty fertilizers or if plant food elements or other additives are added.

(h) For unacidulated mineral phosphatic materials and basic slag:

(1) the total phosphate;

(2) the available phosphate; and

(3) the degree of fineness;

must be guaranteed. For bone, tankage, and other natural organic phosphate materials, only the total phosphate must be guaranteed.

(i) Additional plant food elements or other additives that are determinable by chemical methods may be guaranteed only by permission of the state chemist. The state chemist shall grant permission only if the state chemist determines, with the advice of the dean of agriculture of Purdue University or the dean's designee, that the guarantee would not constitute a misrepresentation and is correct. Additional plant foods that are guaranteed:

(1) must be included in the guarantee in the form of the element; and

(2) are subject to inspection and analysis in accordance with the methods that the state chemist prescribes.

(j) A distributor is not required to register a brand of commercial fertilizer that is registered under this chapter by another person if the label used by the distributor does not differ in any respect from that used by the registrant.

(k) A distributor who acts as a blender is not required under subsection (a) to register a custom blend that the distributor produces if the ~~fertilizer materials~~ **commercial fertilizers** blended together to produce the custom blend are registered under subsection (a). However, a distributor who acts as a blender shall provide the state chemist with the following information about each custom blend that the distributor produces:

(1) The name and address of the distributor.

(2) The brand and grade of the custom blend.

(3) The guaranteed analysis of the custom blend showing the minimum percentage of plant food claimed in the following order and form:

(A) The percent of total nitrogen (N).

C o p y

(B) The percent of available phosphate (P_2O_5).

(C) The percent of soluble potash (K_2O).

SECTION 17. IC 15-16-2-32, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 32. (a) The bag or other container in which any commercial fertilizer is offered for sale, sold, or distributed in Indiana must have a written or printed statement of the net weight and the information required by section 31 of this chapter **directly**

~~(1)~~ on ~~tags~~ **or** affixed to the ~~end of the~~ package.

~~(A) between the ears;~~

~~(B) on the sewed end; or~~

~~(C) in both locations described in clauses (A) and (B); or~~

~~(2) directly on the package.~~

(b) If the commercial fertilizer is distributed in bulk, the written or printed statement required by section 31 of this chapter must:

(1) accompany the **commercial** fertilizer at delivery; and

(2) be supplied to the purchaser at time of delivery.

SECTION 18. IC 15-16-2-34, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 34. (a) Each registrant shall apply to the state chemist for a permit to report the tonnage of commercial fertilizer sold and pay the inspection fee of forty-five cents ($0.45) per ton on the basis of the report. In making the application, the registrant must agree to the following:

(1) To keep records that the state chemist requires to indicate accurately the tonnage and kinds of commercial fertilizers sold in Indiana.

(2) To grant the state chemist permission to examine those records and verify the statement of tonnage.

(3) To report under oath to the state chemist on forms furnished by the state chemist the tonnage of commercial fertilizer sold during the period covered.

(b) The state chemist:

(1) may grant the permit if the state chemist determines that the **application of the permit to report** tonnage ~~report~~ of **commercial** fertilizer described in subsection (a) will lead to efficient enforcement of this chapter; and

(2) may revoke the permit at any time if it appears to the state chemist that the registrant is not complying with:

(A) the terms of the agreement entered into at the time of the issuance of the permit; or

(B) this chapter.

C o p y

(c) The report of tonnage is due and the inspection fees are payable semiannually on the last day of the month following the end of the semiannual period.

(d) If:

(1) the report of tonnage is not filed and the inspection fee paid by the fifteenth day following the due date;

(2) the report of tonnage is false; or

(3) the permit holder has not complied with labeling requirements of this chapter;

the state chemist may revoke the permit.

(e) If the inspection fee is unpaid after the fifteen (15) day grace period described in subsection (d), a penalty shall be assessed in the amount of:

(1) fifty dollars ($50); or

(2) ten percent (10%) of the amount due;

whichever is greater, in addition to the amount due.

SECTION 19. IC 15-16-2-35, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 35. (a) The state chemist shall pay to the treasurer of Purdue University all inspection fees collected under this chapter.

(b) Inspection fees collected under this chapter must be used to pay all necessary expenses incurred in carrying out this chapter, including the following:

(1) Employing inspectors and chemists.

(2) Procuring samples.

(3) Printing bulletins.

(4) Giving the results of ~~fertilizer~~ inspections as provided for by this chapter.

(5) Any other expenses incurred by Purdue University agricultural programs:

(A) authorized by law; and

(B) in support of the purposes of this chapter.

(c) The dean of agriculture of Purdue University shall make an annual classified report to the governor showing the total receipts and expenditures of all fees received under this chapter.

SECTION 20. IC 15-16-2-38, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 38. (a) The state chemist shall:

(1) sample, inspect, make analysis of, and test commercial fertilizers distributed within Indiana; and

(2) inspect the storage of bulk fertilizers in Indiana at a time and place and to such an extent as necessary to determine whether the

C o p y

~~commercial~~ **bulk** fertilizers and their storage are in compliance with this chapter.

(b) The state chemist may enter upon any public or private premises during regular business hours in order to have access to:

(1) ~~fertilizers;~~ **fertilizer materials;** and

(2) plans and records relating to the transportation, storage, sale, and use of ~~fertilizers;~~ **fertilizer materials;**

subject to this chapter and the rules adopted under this chapter.

(c) The state chemist shall adopt methods of sampling and analysis **for commercial fertilizers** from sources that may include AOAC ~~(Association of Analytical Communities)~~ International. In cases of dispute, AOAC International's methods prevail if AOAC International's methods are available.

(d) The state chemist shall determine for administrative purposes whether a commercial fertilizer is deficient in plant foods using only the official sample obtained and analyzed as provided in subsection (c).

SECTION 21. IC 15-16-2-39, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 39. If an official **commercial** fertilizer analysis conducted by the state chemist under section 38 of this chapter results in a determination that the registrant of a commercial fertilizer is subject to a penalty or other legal action under this chapter, the state chemist shall forward a report of the results of the analysis to the registrant at least thirty (30) days before the report is submitted to the purchaser of the **commercial** fertilizer. If the analysis was requested by a person other than the state chemist, the results of the analysis shall be forwarded to the registrant and purchaser immediately. If, during the thirty (30) day period, the state chemist does not receive adequate evidence contesting the results in the report, the report becomes an official report at the expiration of the thirty (30) day period. Upon the registrant's request, the state chemist shall furnish to the registrant part of the **commercial** fertilizer sample analyzed by the state chemist to determine that the registrant is subject to a penalty or other legal action under this chapter.

SECTION 22. IC 15-16-2-40, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 40. (a) If an analysis conducted by the state chemist under section 38 of this chapter shows that a commercial fertilizer fails in any respect to meet the guaranteed analysis filed by a registrant under section 31 of this chapter, the state chemist may require the payment of a refund to the purchaser equal to the difference between:

C o p y

(1) the price the purchaser paid for the **commercial** fertilizer; and

(2) the current value of the **commercial** fertilizer after the state chemist's analysis.

(b) The registrant must forward receipts for payment of refunds required under subsection (a) promptly to the state chemist. If the purchaser cannot be found, the registrant shall pay the refund to a local charitable or educational organization of the registrant's choice and forward the receipts promptly to the state chemist.

(c) This section does not prevent the appeal of the imposition **of** any penalty assessed by the state chemist under this chapter to a court with jurisdiction.

SECTION 23. IC 15-16-2-41, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 41. Bulk fertilizers must be stored in a manner that:

(1) minimizes the release of **bulk** fertilizer; and

(2) protects the waters of the state.

SECTION 24. IC 15-16-2-42, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 42. (a) A commercial fertilizer is misbranded if:

(1) the **commercial** fertilizer carries any false or misleading statement upon or attached to the container; or

(2) false or misleading statements concerning the **commercial** fertilizer's ~~agricultural~~ **nutrient** value are made:

(A) on the container; or

(B) in any advertising ~~matter~~ **media** accompanying or associated with the **commercial** fertilizer.

It is unlawful to distribute a misbranded commercial fertilizer.

(b) It is unlawful to distribute an adulterated commercial fertilizer. For purposes of this subsection, a commercial fertilizer is adulterated if:

(1) the **commercial** fertilizer contains any deleterious or harmful substance in a sufficient amount to render the **commercial** fertilizer injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label; or

(2) the label does not include adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water.

SECTION 25. IC 15-16-2-44, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 44. **(a)** The state chemist may adopt rules under

C o p y

IC 4-22-2 concerning the following:

(1) The **distribution and** use of fertilizer material.

(2) The distribution and storage of bulk ~~commercial~~ fertilizers, including standards for the storage of bulk fertilizers to protect the waters of the state.

(3) The establishment of:

(A) certification and educational programs for:

(i) applicators and transporters of fertilizer material for hire; and

(ii) applicators and transporters of fertilizer material from CAFOs (as defined in IC 13-11-2-38.3) and confined feeding operations (as defined in IC 13-11-2-40);

as determined by the state chemist, relating to the application and transportation of fertilizer material; and

(B) fees for the certification and education programs provided under clause (A).

(b) Any fees collected for a certification and educational programs under subsection (a)(3) shall be collected by the state chemist and deposited and administered under section 44.5 of this chapter.

SECTION 26. IC 15-16-2-44.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 44.5. (a) The state chemist shall pay to the treasurer of Purdue University all certification and educational program fees collected under section 44 of this chapter.**

(b) Certification and educational program fees collected under section 44 of this chapter must be used to pay all necessary expenses incurred in carrying out and administering the certification and educational programs.

(c) The dean of agriculture of Purdue University shall make an annual classified report to the governor showing the total receipts and expenditures of all fees received under this section.

SECTION 27. IC 15-16-2-46, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 46. (a) If the state chemist determines that a ~~lot of~~ commercial fertilizer is being offered for sale in violation of this chapter, the state chemist may issue to and enforce upon the owner or custodian: ~~of the lot.~~

(1) a written or printed stop sale, use, or removal order; and

(2) a written or printed order to hold the ~~lot~~ **commercial fertilizer** at a designated place until:

C o p y

(A) the owner or custodian complies with ~~the law;~~ **this chapter;**

(B) the state chemist releases the ~~lot~~ **commercial fertilizer** in writing; or

(C) the violation is legally disposed of by written authority.

(b) The state chemist shall release commercial fertilizer withdrawn under subsection (a) when:

(1) the owner or custodian ~~of the lot~~ complies with this chapter; and

(2) all costs and expenses incurred in connection with the withdrawal have been paid.

SECTION 28. IC 15-16-2-47, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 47. (a) Any ~~lot of~~ commercial fertilizer not in compliance with this chapter is subject to seizure based on a complaint of the state chemist filed in a court with jurisdiction in the area in which the commercial fertilizer is located.

(b) Subject to subsection (a), if the court finds the commercial fertilizer is in violation of this chapter and orders the condemnation of the commercial fertilizer, the **commercial** fertilizer must be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state.

(c) A court may not order the disposition of ~~any lot of~~ **the** commercial fertilizer without first giving the claimant an opportunity to apply to the court for:

(1) release of the commercial fertilizer; or

(2) permission to process or relabel the commercial fertilizer to bring it into compliance with this chapter.

SECTION 29. IC 15-16-2-49.5, AS ADDED BY P.L.120-2008, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 49.5. (a) If a person violates this chapter or a rule adopted under this chapter, the state chemist may:

(1) warn, ~~or~~ issue a citation to, **or impose a civil penalty on** the person; or

(2) deny, suspend, revoke, or amend the person's registration under this chapter.

(b) The state chemist shall adopt by rule, under IC 4-22-2, a schedule of civil penalties that may be imposed under subsection (a). The state chemist may impose a civil penalty only according to a schedule of civil penalties recommended by the board.

~~(b)~~ **(c)** A person who knowingly or intentionally violates this chapter commits a Class A misdemeanor.

C o p y

SECTION 30. IC 15-16-2-50, AS ADDED BY P.L.2-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 50. (a) Except as provided in subsection (b), a political subdivision (as defined in IC 36-1-2-13) does not have authority to regulate by ordinance the storage or use of fertilizer **material.**

(b) A political subdivision may, by resolution, petition the state chemist for a hearing to allow a waiver to adopt an ordinance because of special circumstances relating to the storage or use of fertilizer **material.** If a petition is received, the state chemist shall hold a public hearing to consider allowing the waiver requested. The public hearing must be conducted in an informal manner. IC 4-21.5 does not apply to a public hearing under this section.

SECTION 31. IC 15-16-2-48 IS REPEALED [EFFECTIVE JULY 1, 2009].

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1191, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 7, strike "Class C".

Page 2, line 7, after "infraction." insert "**Class A**".

Page 11, line 3, strike "commercial".

Page 11, line 7, delete "for specified" and insert "**for:**

(i) applicators and transporters of fertilizer material for hire; and

(ii) applicators and transporters of fertilizer material from CAFOs (as defined in IC 13-11-2-38.3) and confined feeding operations (as defined in IC 13-11-2-40);".

Page 11, line 8, delete "categories of fertilizer material applicators,".

Page 11, line 8, beginning with "as" begin a new line double block indented.

Page 12, line 28, after "to" insert ",".

Page 12, line 32, delete "board" and insert "**state chemist**".

Page 12, line 34, delete "the" and insert "**a**".

Page 12, line 35, delete "adopted" and insert "**recommended**".

and when so amended that said bill do pass.

(Reference is to HB 1191 as introduced.)

PFLUM, Chair

Committee Vote: yeas 10, nays 2.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1191 be amended to read as follows:

Page 2, line 7, reset in roman "Class C".

Page 2, line 7, delete "Class A".

(Reference is to HB 1191 as printed February 18, 2009.)

LEHMAN

C o p y