

MAR 28 2002
Agriculture

HOUSE FILE 2607
BY FORD

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to fertilizers and soil conditioners and
2 pesticides, by providing for their containment, providing for
3 fees, providing penalties, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HF 2607

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1 Section 1. NEW SECTION. 200.13A CONTAINMENT OF
2 FERTILIZERS AND SOIL CONDITIONERS.

3 1. A person licensed pursuant to section 200.4 shall
4 provide for the containment of fertilizers and soil
5 conditioners in a manner that ensures that fertilizers or soil
6 conditioners do not discharge into surface or subsurface
7 water, including but not limited to a major water source as
8 defined in section 455B.204.

9 2. The department shall adopt rules as required in order
10 to administer and enforce this section. The rules shall
11 provide for all of the following:

12 a. The regulation of mobile and permanent storage of
13 fertilizers and soil conditioners, including but not limited
14 to the construction of primary and secondary containment
15 structures as part of permanent storage containers, and
16 related equipment including but not limited to piping.

17 b. The establishment of standards necessary to ensure
18 compliance with this section. As part of the standards, the
19 department shall provide for the design, construction,
20 location, installation, and operation of containers and
21 related equipment used in connection with the storage,
22 handling, transportation, and utilization of fertilizers and
23 soil conditioners.

24 c. The loading, unloading, and mixing of fertilizers or
25 soil conditioners in designated areas as determined necessary
26 by the department.

27 3. a. The department shall provide for the inspection of
28 persons licensed pursuant to section 200.4 as necessary in
29 order to ensure compliance with this section. However, the
30 department shall at least provide for annual inspections. An
31 inspection shall include an inspection of storage containers
32 and related equipment.

33 b. The department shall assess and the licensee shall pay
34 the actual costs of an annual inspection. All moneys received
35 by the department for inspections under this section shall be

1 handled in the same manner as repayment receipts, as defined
2 in section 8.2, and shall be used solely for the
3 administration and enforcement of this chapter.

4 Sec. 2. Section 200.15, Code 2001, is amended to read as
5 follows:

6 200.15 ~~REFUSAL-TO-REGISTER, OR CANCELLATION-OF~~
7 ~~REGISTRATION-AND-LICENSES~~ REGISTRANTS AND LICENSEES --
8 DISCIPLINARY ACTION.

9 ~~The secretary is authorized and empowered to cancel~~
10 department may do any of the following:

11 1. Cancel the registration of any ~~product-of-commercial~~
12 fertilizer or soil conditioner ~~or license~~ or to refuse to
13 register any ~~product-of-commercial~~ fertilizer or soil
14 conditioner ~~or refuse to license any applicant as herein~~
15 ~~provided,~~ as provided in section 200.5, upon satisfactory
16 evidence that the registrant ~~or licensee~~ has used done any of
17 the following:

18 a. Willfully violated any provision of this chapter
19 including a rule adopted by the department pursuant to this
20 chapter.

21 b. Used a fraudulent or deceptive practices-or-who
22 willfully-violates-any-provisions-of-this-chapter-or-any-rules
23 and-regulations-promulgated-thereunder:--Except-no
24 registration-or-license-shall-be-revoked-or-refused-until-the
25 registrant-or-licensee-shall-have-been-given-the-opportunity
26 to-appear-for-a-hearing-by-the-secretary practice in
27 conducting business as a registrant.

28 2. Suspend or revoke the license of a person licensed
29 pursuant to section 200.4 upon satisfactory evidence that the
30 person has done any of the following:

31 a. Violated a provision of this chapter, including a rule
32 adopted pursuant to this chapter.

33 b. Used a fraudulent or deceptive practice in conducting a
34 business as a registrant.

35 Sec. 3. Section 200.18, Code 2001, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 1A. a. A licensee who violates a
3 provision of section 200.13A, including a rule adopted
4 pursuant to that section shall be subject to a civil penalty
5 of not more than ten thousand dollars for each violation.
6 Each day that a violation continues shall be considered a
7 separate violation.

8 b. The department shall establish, assess, and collect
9 civil penalties for the violations. In determining the amount
10 of the civil penalty, the department shall consider all of the
11 following:

12 (1) The actual or potential damages caused by the
13 violation to the public health or safety, or to the
14 environment.

15 (2) The action required by the state or injured parties to
16 remediate the damages caused by the violation.

17 (3) The licensee's previous history of complying with
18 orders or decisions of the department.

19 The department or a presiding officer in a contested case
20 proceeding conducted under chapter 17A shall not mitigate the
21 amount of civil penalties assessed against a person based on
22 remediation made by the licensee.

23 c. The civil penalties assessed under this subsection
24 shall be in addition to any fine imposed under section 481A.32
25 and any civil penalty assessed under section 481A.130.

26 Sec. 4. NEW SECTION. 206.18A CONTAINMENT OF FERTILIZERS
27 AND SOIL CONDITIONERS.

28 1. A person licensed pursuant to section 206.8 shall
29 provide for the containment of pesticides in a manner that
30 ensures that the pesticides do not discharge into surface or
31 subsurface water, including but not limited to a major water
32 source as defined in section 455B.204.

33 2. The department shall adopt rules as required in order
34 to administer and enforce this section. The rules shall
35 provide for all of the following:

1 a. The regulation of mobile and permanent storage of
2 pesticides, including but not limited to the construction of
3 primary and secondary containment structures as part of
4 permanent storage containers, and related equipment including
5 but not limited to piping.

6 b. The establishment of standards necessary to ensure
7 compliance with this section. As part of the standards, the
8 department shall provide for the design, construction,
9 location, installation, and operation of containers and
10 related equipment used in connection with the storage,
11 handling, transportation, and utilization of pesticides.

12 c. The loading, unloading, and mixing of pesticides in
13 designated areas as determined necessary by the department.

14 3. a. The department shall provide for the inspection of
15 persons licensed pursuant to section 206.8 as necessary in
16 order to ensure compliance with this section. However, the
17 department shall at least provide for annual inspections. An
18 inspection shall include an inspection of storage containers
19 and related equipment.

20 b. The department shall assess and the person licensed as
21 a dealer shall pay the actual costs of an annual inspection.
22 All moneys received by the department for inspections under
23 this section shall be handled in the same manner as repayment
24 receipts, as defined in section 8.2, and shall be used solely
25 for the administration and enforcement of this chapter.

26 Sec. 5. NEW SECTION. 206.19A DEALERS -- DISCIPLINARY
27 ACTION.

28 The department may suspend or revoke the license of a
29 person licensed pursuant to section 206.8 upon satisfactory
30 evidence that the person has violated a provision of this
31 chapter, including a rule adopted pursuant to this chapter.

32 Sec. 6. Section 206.22, Code 2001, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 4. a. A pesticide dealer who violates
35 section 206.18A, including a rule adopted pursuant to that

1 section, shall be subject to a civil penalty of not more than
2 ten thousand dollars for each violation. Each day that a
3 violation continues shall be considered a separate violation.

4 b. The department shall establish, assess, and collect
5 civil penalties for the violations. In determining the amount
6 of the civil penalty, the department shall consider all of the
7 following:

8 (1) The actual or potential damages caused by the
9 violation to the public health or safety, or to the
10 environment.

11 (2) The action required by the state or injured parties to
12 remediate the damages caused by the violation.

13 (3) The pesticide dealer's previous history of complying
14 with orders or decisions of the department.

15 The department or a presiding officer in a contested case
16 proceeding conducted under chapter 17A shall not mitigate the
17 amount of civil penalties assessed against a person based on
18 remediation made by the pesticide dealer.

19 c. The civil penalties assessed under this subsection
20 shall be in addition to any fine imposed under section 481A.32
21 and any civil penalty assessed under section 481A.130.

22 Sec. 7. EFFECTIVE DATE. This Act, being deemed of
23 immediate importance, takes effect upon enactment.

24 EXPLANATION

25 This bill provides for the regulation of dealers of
26 fertilizers and soil conditioners under Code chapter 200 and
27 pesticide dealers under Code chapter 206. The department of
28 agriculture and land stewardship has adopted rules for the
29 containment of fertilizers and soil conditioners and
30 pesticides under 21 IAC 44 under general statutory provisions
31 (see Code sections 200.14 and 206.19).

32 The bill provides express authority to the department to
33 regulate the containment of fertilizer and soil conditioners
34 and pesticides. The bill amends both Code chapters to provide
35 that a licensee is required to contain fertilizers and soil

1 conditioners under Code chapter 200 or pesticides under Code
2 chapter 206 in a manner that ensures that they do not
3 discharge into surface or subsurface water. The bill requires
4 the department to adopt rules for the regulation of mobile and
5 permanent storage containers, including but not limited to the
6 construction of primary and secondary containment structures
7 as part of permanent storage containers, and related equipment
8 including but not limited to piping. The bill requires the
9 establishment of design and construction standards, and
10 provides for the regulation of loading, unloading, and mixing
11 of the fertilizers or soil conditioners or pesticides.

12 The bill requires the department to conduct annual
13 inspections of licensees. The inspections must include an
14 inspection of the storage containers and related equipment.
15 The department is authorized to charge licensees costs
16 associated with the inspections.

17 The bill also provides for the suspension or revocation of
18 a licensee's license for a violation of a provision of the
19 bill.

20 This bill provides that a licensee who violates a provision
21 of the bill is subject to a civil penalty of not more than
22 \$10,000 for each violation. The bill provides that each day
23 that a violation continues is considered a separate violation.
24 The bill requires the department to establish, assess, and
25 collect civil penalties for the violations. According to Code
26 section 200.18, a person who violates a provision of Code
27 chapter 200 or rule adopted pursuant to that chapter is guilty
28 of a simple misdemeanor. A simple misdemeanor is punishable
29 by confinement for no more than 30 days, or a fine of at least
30 \$50 but not more than \$500, or by both.

31 The bill takes effect upon enactment.

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