

1 House BILL NO. 678
 2 INTRODUCED BY Agnes Anderson
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 5 UPDATE COMMERCIAL FERTILIZER LAWS, MODIFYING AND ADDING
 6 DEFINITIONS, CHANGING LICENSING REQUIREMENTS, RAISING
 7 FERTILIZER INSPECTION FEES, ESTABLISHING INSPECTION FEES FOR
 8 SOIL AMENDMENTS, ALTERING THE TONNAGE REPORTING SYSTEM,
 9 ESTABLISHING AN EFFECTIVE DATE; AMENDING SECTIONS 3-1714.1,
 10 3-1718, 3-1722, 3-1724, 3-1727, AND 3-1728, R.C.M. 1947, AND
 11 REPEALING SECTIONS 3-1714, 3-1715, 3-1716, 3-1717, 3-1720,
 12 3-1721, 3-1723, 3-1725, AND 3-1726, R.C.M. 1947."
 13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. There is a new R.C.M. section numbered
 16 3-1714.2 that reads as follows:

17 3-1714.2. Definitions. As used in this chapter:

18 (1) "Commercial fertilizer" includes any substance
 19 containing one or more recognized plant nutrients which is
 20 used for its plant nutrient content and which is designed
 21 for use or claimed to have value in promoting plant growth,
 22 yield or quality of the crop.

23 (a) "Fertilizer materials" is a commercial fertilizer
 24 which either:

25 (i) contains important quantities of not more than

1 one of the primary plant nutrients (nitrogen, phosphoric
 2 acid and potash), or

3 (ii) has approximately eighty-five percent (85%) of
 4 its plant nutrient content present in the form of a single
 5 chemical compound, or

6 (iii) is derived from a plant or animal residue or
 7 by-product or a natural material deposit which has been
 8 processed in such a way that its content of primary plant
 9 nutrients has not been materially changed except by
 10 purification and concentration.

11 (b) "Mixed fertilizers" is a commercial fertilizer
 12 (dry or liquid) containing any combination or mixture of
 13 fertilizer materials.

14 (c) "Specialty fertilizer" is a commercial fertilizer
 15 (dry or liquid) distributed primarily for nonfarm use, such
 16 as home gardens, lawns, shrubbery, flowers, golf courses,
 17 municipal parks, cemeteries, greenhouses, and nurseries and
 18 includes commercial fertilizers used for research or
 19 experimental purposes.

20 (d) "Bulk fertilizer" is commercial fertilizer (dry or
 21 liquid) distributed in nonpackage form, or in containers of
 22 greater than one thousand (1000) pounds.

23 (e) "Packaged fertilizer" is commercial fertilizer
 24 (dry or liquid) distributed in sealed containers of one
 25 thousand (1000) pounds or less.

1 (2) "Brand" means a term, design, or trademark used in
2 connection with one (1) or several grades of commercial
3 fertilizer.

4 (3) "Grade" means the percentages of total nitrogen,
5 available phosphorus or phosphoric acid, and soluble
6 potassium or soluble potash stated in whole numbers in the
7 same terms, order, and percentages as in the guaranteed
8 analysis. Provided, however, that fertilizer materials,
9 bone meal, manures and similar raw materials may be
10 guaranteed in fractional units.

11 (4) "Official sample" means any sample of commercial
12 fertilizer taken by the department of agriculture.

13 (5) "Ton" means a net weight of two thousand (2000)
14 pounds avoirdupois.

15 (6) "Percent or percentage" means the percentage by
16 weight.

17 (7) "Person" means an individual, partnership,
18 association, firm, or corporation.

19 (8) "Distribute" means to offer for sale, sell,
20 barter, or otherwise supply commercial fertilizers.

21 (9) "Distributor" means any person who distributes.

22 (10) "Registrant" means the person who registers
23 commercial fertilizer and/or soil amendment.

24 (11) "Manipulated manures" means substances composed
25 primarily of excreta, plant remains, or mixtures of such

1 substances which have been processed in any manner,
2 including the addition of plant nutrients, drying, grinding
3 and other means.

4 (12) "Soil amendment" means any material not included
5 under commercial fertilizer, or those products subject to
6 the Federal Insecticide, Fungicide or Rodenticide Act as
7 amended, which is added to soil or to plants for purposes of
8 influencing the growth, yield or quality of the crop, soil
9 flora or fauna or other soil characteristics.

10 (13) "Licensee" means any person who has obtained a
11 license from the department so he may legally distribute
12 commercial fertilizer other than specialty fertilizers or
13 soil amendment in this state.

14 Section 2. Section 3-1714.1, R.C.M. 1947, is
15 renumbered 3-1714.3, and is amended to read as follows:

16 ~~"3-1714.1~~ 3-1714.3. Guaranteed analysis. (1) Until the
17 department prescribes the alternative form under subsection
18 (2) of this section, "guaranteed analysis" means the minimum
19 percentage of plant nutrients claimed in the following order
20 and form:

21 (a) Total nitrogen (N)-----percent
22 Available phosphoric acid (P2O5)-----percent
23 Soluble potash (K2O)-----percent

24 (b) For unacidulated mineral phosphatic materials and
25 basic slag, ~~guaranteed--analysis--includes--both--total--and~~

1 ~~available-phosphoric-acid-and-the-degree-of-fineness~~

2 ~~(e)---For bone meal, tankage, and other organic~~
 3 ~~phosphatic materials, guaranteed-analysis--includes--total~~
 4 ~~phosphoric--acid the total phosphoric acid and/or degree of~~
 5 ~~fineness may also be guaranteed.~~

6 ~~(d)(c)~~ Guarantees for plant nutrients other than
 7 nitrogen, phosphorus, and potassium may be permitted or
 8 required by rules adopted by the department. The guarantees
 9 for other nutrients shall be expressed in the form of the
 10 element. The sources of other nutrients including, but not
 11 limited to, oxides, salt, and chelates, may be required to
 12 be stated on the application for registration and may be
 13 included as a parenthetical statement on the label. Other
 14 beneficial substances or compounds, determinable by
 15 laboratory methods, also may be guaranteed by permission of
 16 the department. When any plant nutrients or other substances
 17 or compounds are guaranteed, they are subject to inspection
 18 and analysis in accord with the methods and regulations
 19 prescribed by section 3-1718.

20 ~~(e)(d)~~ Except when prohibited by regulation, potential
 21 potential basicity or acidity expressed in terms of calcium
 22 carbonate equivalent in multiples of one hundred (100)
 23 pounds per ton, may be shown when required by regulation.

24 (2) If the department finds, after public hearing,
 25 that the requirement for expressing the guaranteed analysis

1 of phosphorus and potassium in elemental form would not
 2 impose an economic hardship on distributors and users of
 3 fertilizer by reason of conflicting labeling requirements
 4 among the states, it may require by department rule that the
 5 guaranteed analysis be in the following form:

6 Total nitrogen (N)-----percent
 7 Available phosphorus (P)-----percent
 8 Soluble potassium (K)-----percent

9 (3) The effective date of the rule may not be less
 10 than six (6) months following the adoption of the rule. For
 11 a period of two (2) years following the effective date of
 12 the rule, the equivalent of phosphorus and potassium may
 13 also be shown in the form of phosphoric acid and potash.
 14 However, after the effective date of a rule requiring that
 15 phosphorus and potassium be shown in the elemental form, the
 16 guaranteed analysis for nitrogen, phosphorus, and potassium
 17 is the grade for those elements.

18 (4) Soil amendments shall guarantee the minimum
 19 quantity of each active ingredient in terms approved by the
 20 department or in terms as set forth in rules issued by the
 21 department. They shall also meet any other requirements
 22 established by rule by the department."

23 Section 3. There is a new R.C.M. section numbered
 24 3-1715.1 that reads as follows:

25 3-1715.1. Registration and licenses. (1) Each brand

1 and grade of fertilizer and each soil amendment except
 2 unmanipulated animal and vegetable manures, shall be
 3 registered before distribution in this state. The
 4 application for registration shall be submitted to the
 5 department on a form furnished or approved by the department
 6 and shall be accompanied by a fee of ten dollars (\$10) per
 7 grade for each fertilizer and for each soil amendment with
 8 exception of specialty fertilizers in packages of ten (10)
 9 pounds or less which shall be registered at a fee of
 10 twenty-five dollars (\$25) each. Upon approval, the
 11 department shall furnish a copy of the registration to the
 12 applicant. All registrations expire on December 31 of each
 13 year. The application for registration shall include:

- 14 (a) the brand and grade;
- 15 (b) the guaranteed analysis;
- 16 (c) the source of each plant food element guaranteed;
- 17 (d) the name and address of the registrant;
- 18 (e) a copy or facsimile of each label and of
 19 promotional material.

20 Further, the department shall require the applicant to
 21 furnish replicated data, performed by a reputable
 22 investigator whose work is recognized as acceptable by the
 23 director of the agricultural experiment station or his
 24 designee, verifying any claims for effectiveness or
 25 agricultural value of any fertilizer or soil amendment

1 product which is not generally recognized as having the
 2 values claimed at the use rates recommended.

3 (2) A distributor may not be required to register any
 4 brand or grade of commercial fertilizer which is already
 5 registered under this section by another person.

6 (3) The plant nutrient content of every brand and
 7 grade of commercial fertilizer shall remain uniform for the
 8 period of registration.

9 (4) No person shall distribute in this state any type
 10 of fertilizer or soil amendment, except unmanipulated animal
 11 or vegetable manures, or specialty fertilizer, until a
 12 license to distribute has been obtained, for each facility
 13 distributing into this state and for each handling facility
 14 in this state, from the department upon payment of a fifty
 15 dollar (\$50) fee for each license. The department may
 16 exempt, by rule, manufacturers. All licenses expire on
 17 December 31 of each year and are subject to the following:

18 (a) The application for license shall be on forms
 19 provided by the department.

20 (b) The applicant shall provide a sample copy of
 21 labeling to be used. The form of labeling shall meet
 22 department standards, established by rule, and all labeling
 23 shall be in proper form.

24 (c) The licensee is not required to register a grade
 25 of fertilizer blended to a specific customer order.

1 (5) The manufacturer or distributor shall at all times
2 deliver a uniform grade of fertilizer or soil amendment.
3 When two (2) or more fertilizers are delivered in the same
4 load, they shall be thoroughly and uniformly mixed unless
5 they are in separate compartments.

6 Section 4. There is a new R.C.M. section numbered
7 3-1716.1 that reads as follows:

8 3-1716.1. Labeling. (1) Any commercial fertilizer
9 distributed in this state in containers shall have affixed
10 to or printed on the container a label setting forth in
11 clearly legible and conspicuous form:

- 12 (a) the net weight;
- 13 (b) the name and address of the manufacturer or
14 distributor guaranteeing the analysis;
- 15 (c) the brand and product name;
- 16 (d) the grade;
- 17 (e) the guaranteed analysis; and
- 18 (f) other requirements as established by rule.

19 (2) All commercial fertilizer delivered in this state
20 in bulk, whether a manufactured grade or blended grade,
21 shall be accompanied by a clearly legible document, which
22 shall be supplied to the purchaser at the time of delivery,
23 and at the time his invoice is delivered. The document
24 shall show:

- 25 (a) net weight;

1 (b) name and address of the distributor or
2 manufacturer guaranteeing the analysis;

- 3 (c) grade;
- 4 (d) guaranteed analysis;
- 5 (e) net weight and guaranteed analysis of each
6 ingredient added to a blend, together with spreading
7 instructions; and
- 8 (f) other requirements as established by rule.

9 (3) When distributed in containers, soil amendments
10 shall have a label affixed to or printed on the container.
11 When delivered in bulk the label shall be clearly legible
12 and shall accompany the delivery of the product. This label
13 shall be supplied to the purchaser at the time of delivery
14 and at the time of invoicing. The label shall contain the
15 following information:

- 16 (a) net weight;
- 17 (b) name and address of the registrant or licensee who
18 is responsible for the product;
- 19 (c) brand and product name;
- 20 (d) guaranteed analysis;
- 21 (e) other requirements, such as particle size, as
22 established by rule.

23 Section 5. There is a new R.C.M. section numbered
24 3-1717.1 that reads as follows:

25 3-1717.1. Fees. (1) There shall be paid to the

1 department fees on all commercial fertilizer, except
 2 specialty fertilizers sold in packages of ten (10) pounds or
 3 less, and unmanipulated animal and vegetable manures
 4 distributed in this state, provided that sales to
 5 manufacturers or exchanges between them are exempt. The
 6 fees are:

7 (a) Inspection, twenty cents (\$.20) per ton. The
 8 department may by rule after hearing, adjust the inspection
 9 fee not to exceed a maximum of twenty-five cents (\$.25) per
 10 ton to maintain adequate funding for the administration of
 11 this act. Any change in fee becomes effective on the first
 12 day of a reporting period. All registrants shall be given
 13 notice of any change in fees before the effective date.

14 (b) Assessment, the fee prescribed in section 3-1729.
 15 The assessment fee shall be used to fund educational and
 16 experimental programs as provided in sections 3-1729,
 17 3-1730, 3-1731 and 3-1734, R.C.M. 1947.

18 (2) There shall be paid to the department on all soil
 19 amendments distributed in this state an inspection fee of
 20 ten cents (\$.10) per ton subject to the following provisions:

21 (a) sales to manufacturer's or exchanges between them
 22 are exempt; and

23 (b) when less than fifty(50) tons of registered soil
 24 amendment is sold per six (6) month period, there shall be
 25 paid to the department a fee of five dollars (\$5) per soil

1 amendment per six (6) month period in lieu of the ten cents
 2 (\$.10) per ton fee. Inspection fees shall be used by the
 3 department for administration of this act.

4 (3) Every registrant who distributes a soil amendment
 5 or commercial fertilizer, except specialty fertilizer in
 6 packages of ten (10) pounds or less and unmanipulated
 7 manures, in this state shall file with the department on
 8 forms furnished by the department a semiannual statement for
 9 the periods ending June 30 and December 31 setting forth the
 10 number of net tons of each commercial fertilizer and/or soil
 11 amendment distributed in this state during the six (6) month
 12 period. The report is due on or before the thirtieth day of
 13 the month following the close of each period. The
 14 registrant shall pay the proper inspection fee at that time.

15 If the tonnage report is not filed and the payment of
 16 inspection fee is not made within thirty (30) days after the
 17 end of the period a collection fee amounting to ten percent
 18 (10%) of the amount due but not less than ten dollars (\$10)
 19 shall be assessed against the registrant or licensee, and
 20 the amount of fees due shall constitute a debt and become
 21 the basis of a judgment against the registrant.

22 (4) All fees collected for licenses, registration and
 23 inspection, and moneys collected as penalties shall be
 24 deposited in the state treasury to the credit of the
 25 earmarked revenue fund for the purpose of administering this

1 chapter, including the cost of equipment and facilities and
 2 the cost of inspecting, analyzing and examining commercial
 3 fertilizer and soil amendments manufactured or distributed
 4 in this state. Reserve funds may be invested by the
 5 department with interest credited to the earmarked revenue
 6 fund.

7 Section 6. Section 3-1718, R.C.M. 1947, is amended to
 8 read as follows:

9 "3-1718. Inspection, sampling, analysis. (1) The
 10 department, in cooperation with the agricultural experiment
 11 station of Montana state university, shall sample, inspect,
 12 analyze, and test commercial fertilizers and soil amendments
 13 distributed in this state at a time and place and to an
 14 extent necessary to determine whether the commercial
 15 fertilizers or soil amendments are in compliance with this
 16 chapter. The department may enter upon any public or private
 17 premises during regular business hours in order to have
 18 access to commercial fertilizers or soil amendments subject
 19 to this chapter.

20 (2) The methods of analysis and sampling shall be
 21 those adopted by the department from sources such as those
 22 of the association of official analytical chemists. The
 23 results of analysis, together with additional information
 24 the department considers advisable, shall be transmitted
 25 promptly to the manufacturer and to the dealer or person in

1 whose possession the product was sampled.

2 (3) The department, in determining whether any
 3 commercial fertilizer is deficient in plant food, or soil
 4 amendment is deficient, shall be guided solely by the
 5 official sample obtained and analyzed as provided for in
 6 paragraphs (1) and (2) of this section.

7 (4) If on the basis of an inspection or the analysis
 8 of the official sample a commercial fertilizer or soil
 9 amendment is found to be subject to penalty or other legal
 10 action, the department shall forward to the registrant
 11 notification of the violation at least ten (10) days before
 12 its report is made public. If during that period no
 13 adequate evidence to the contrary is made available to the
 14 department, the report becomes official. Upon request, the
 15 department shall furnish to the registrant a portion of any
 16 sample found subject to penalty or other legal action."

17 Section 7. There is a new R.C.M. section numbered
 18 3-1720.1 that reads as follows:

19 3-1720.1. Misbranding and adulteration -- prohibition.
 20 No person shall distribute a misbranded or adulterated
 21 fertilizer or soil amendment. (1) A commercial fertilizer
 22 or soil amendment is misbranded if it:

23 (a) carries any false or misleading statement upon or
 24 attached to the container, or if false or misleading
 25 statements concerning its agricultural value are made on the

1 container or in any advertising matter accompanying or
2 associated with the product;

3 (b) is distributed under the name of another product;

4 (c) is not labeled as required in section 3-1716 and
5 in accordance with rules prescribed under this act; or

6 (d) purports to be or is represented as a commercial
7 fertilizer, or is represented as containing a plant nutrient
8 or commercial fertilizer, unless that plant nutrient or
9 commercial fertilizer conforms to the definition of
10 identity, if any, prescribed by rule of the department. In
11 adopting this type rule the department shall give due regard
12 to commonly accepted definitions and official fertilizer
13 terms as issued by the association of american plant food
14 control officials.

15 Section 8. There is a new R.C.M. section numbered
16 3-1721.1 that reads as follows:

17 3-1721.1. Licensee tonnage reports -- confidentiality
18 -- inspection -- failure to file. (1) Each licensee shall
19 file a semiannual report covering the periods January 1
20 through June 30 and July 1 through December 31. The report
21 shall include:

22 (a) beginning and ending commercial fertilizer
23 inventory tonnage by grade;

24 (b) data showing tonnages received by grade during the
25 period; and

1 (c) the name of the supplier.

2 All reports shall be on forms provided by the department or
3 in a form approved by the department. Reports are due in
4 the department office not later than thirty (30) days after
5 the close of the period.

6 (2) Information contained in the reports shall be held
7 confidential by the department. Summary data published by
8 the department shall be in a form that will not disclose
9 details of any operation or business.

10 (3) The department has the right to inspect and audit,
11 during normal business hours, each licensee's records for
12 the purpose of verifying tonnage reports.

13 (4) Failure to file an accurate report constitutes a
14 violation of this act and may be punished by fine,
15 revocation of license, or both.

16 Section 9. Section 3-1722, R.C.M. 1947, is amended to
17 read as follows:

18 "3-1722. Publications. The department shall publish at
19 least annually information concerning the sales of
20 commercial fertilizers, and soil amendments together with
21 data on their production and use as it considers advisable,
22 and shall report the results of the analysis based on
23 official samples of commercial fertilizers and soil
24 amendments sold in this state."

25 Section 10. There is a new R.C.M. section numbered

1 3-1723.1 that reads as follows:

2 3-1723.1. Rules -- adoption by department. (1) The
3 department may adopt those rules for commercial fertilizer
4 and soil amendment which are specifically authorized in this
5 act and those other reasonable rules necessary for the
6 efficient enforcement of this act.

7 (2) In adopting rules the department shall follow
8 procedures prescribed in the Montana Administrative
9 Procedure Act.

10 Section 11. Section 3-1724, R.C.M. 1947, is amended to
11 read as follows:

12 "3-1724. Cancellation or refusal of registration or
13 licenses. (1) The department may cancel the registration of
14 any commercial fertilizer or soil amendment and may refuse
15 to register any commercial fertilizer or soil amendment upon
16 satisfactory evidence that the registrant has used
17 fraudulent or deceptive practices in the evasion or
18 attempted evasion of this chapter or any rules adopted under
19 it. However, no registration may be revoked or refused
20 until the registrant is given the opportunity to ~~appear--for~~
21 ~~a--hearing--by-the-department,-as-provided-in-section-3-1723~~
22 amend his application or correct other practices.

23 (2) The department may cancel any license or refuse to
24 license any person when it has satisfactory evidence that
25 the person has used fraudulent or deceptive practice in the

1 evasion or attempted evasion of this chapter or any rules
2 adopted under it. However, no license may be revoked or
3 refused until the person involved is given the opportunity
4 to appear for a hearing by the department."

5 Section 12. There is a new R.C.M. section numbered
6 3-1725.1 that reads as follows:

7 3-1725.1. Enforcement -- embargo order --
8 condemnation. (1) When the department has reasonable cause
9 to believe any lot of commercial fertilizer or soil
10 amendment is in violation of this act or a rule adopted by
11 the department, it may issue and enforce a written or
12 printed embargo order, requiring the person holding the
13 commercial fertilizer or soil amendment not to dispose of it
14 in any manner until written permission is granted by the
15 department or the court. The department shall release the
16 product when this act and the rules of the department have
17 been complied with. If compliance is not obtained within
18 thirty (30) days, the department may begin, or upon the
19 request of the registrant or the person holding the product
20 shall begin, proceedings for condemnation.

21 (2) Commercial fertilizer or soil amendment not in
22 compliance with this act or the rules of the department may
23 be seized on complaint of the department to a district court
24 in the area in which the product is located. If the court
25 finds the product in violation of this act and orders its

1 condemnation, the fertilizer or amendment shall be disposed
 2 of in any manner consistent with the quality of the product
 3 and state law. The disposition of the product may not be
 4 ordered by the court without first giving the owner or
 5 person from whom the product was seized an opportunity to
 6 apply to the court for release of the product or for
 7 permission to process or relabel the product to bring it
 8 into compliance with this act.

9 Section 13. There is a new R.C.M. section numbered
 10 3-1726.1 that reads as follows:

11 3-1726.1. Plant food deficiency and commercial value.

12 (1) Penalty for nitrogen, available phosphoric acid or
 13 phosphorus and potash or potassium. If the analysis shows
 14 that a commercial fertilizer is deficient (a) in one or more
 15 if its guaranteed primary plant foods (NPK) beyond the
 16 "investigational allowance" as established by regulation, or

17 (b) if the overall index value of the fertilizer is
 18 below the level established by regulations, a penalty of two

19 (2) times the commercial value of that deficiency, as
 20 determined by the dealer or manufacturers' price on the date
 21 of sampling of the deficiency or deficiencies, shall be
 22 assessed. When a commercial fertilizer is subject to a
 23 penalty under both (a) and (b) the larger penalty applies.

24 (2) Penalty for other deficiencies -- deficiencies
 25 beyond the investigational allowances as established by

1 regulation in any other constituent covered under section
 2 3-1714.3 (1)(b), (c) and (d), R.C.M. 1947, which the
 3 registrant is required to or may guarantee, shall be
 4 evaluated and penalties shall be assessed at two times the
 5 commercial value of the deficiency as determined by the
 6 dealers retail price on the date of sampling.

7 (3) Nothing contained in this section shall prevent
 8 any person from appealing the department's decision to a
 9 court of competent jurisdiction.

10 (4) All penalties assessed under this section shall be
 11 paid to the consumer of the lot of commercial fertilizer
 12 represented by the sample analyzed within three (3) months
 13 after the date of notice from the department to the
 14 registrant or licensee. If at the end of the three (3)
 15 month period, the consumer cannot be found, receipts shall
 16 be taken and promptly forwarded to the department for
 17 deposit in the earmarked revenue fund as provided in section
 18 3-1717.1.

19 Section 14. Section 3-1727, R.C.M. 1947, is amended to
 20 read as follows:

21 "3-1727. Violations-enforcement proceedings --
 22 judicial review. (1) If it appears from the examination of
 23 any commercial fertilizer that this chapter or the rules
 24 adopted under this chapter have been violated, the
 25 department shall give notice of the violations to the

1 registrant, licensee, distributor, or possessor from whom
 2 the sample was taken. A person notified shall be given an
 3 opportunity to be heard under rules of the department. If it
 4 appears after a hearing, either in the presence or absence
 5 of the person notified, that this chapter or rules issued
 6 under this chapter have been violated, the department may
 7 certify the facts to the proper prosecuting attorney.

8 (2) A person who violates this chapter or the rules
 9 adopted under this chapter, or who obstructs, prevents, or
 10 attempts to prevent the department from performing its duty
 11 under this chapter, is guilty of a misdemeanor and shall be
 12 fined not less than three hundred dollars (\$300) nor more
 13 than five hundred dollars (\$500) for the first violation,
 14 and not less than three hundred dollars (\$300) nor more than
 15 one thousand dollars (\$1,000) for a subsequent violation. In
 16 all prosecutions under this chapter involving the
 17 composition of a lot of commercial fertilizer, a certified
 18 copy of the official analysis of the department is prima
 19 facie evidence of the composition.

20 (3) Nothing in this chapter requires the department to
 21 report for prosecution or for the beginning of seizure
 22 proceedings minor violations of this chapter when it
 23 believes that the public interest will be best served by a
 24 suitable notice of warning in writing.

25 (4) A prosecuting attorney to whom a violation is

1 reported shall prosecute the violator in a court of
 2 competent jurisdiction without delay.

3 (5) The department may apply for and the court may
 4 grant a temporary or permanent injunction restraining any
 5 person from violating or continuing to violate any of the
 6 provisions of this chapter or any rule adopted under the
 7 chapter notwithstanding the existence of other remedies at
 8 law. The injunction shall be issued without bond.

9 (6) If a person adversely affected by an act, order, or
 10 ruling made by the department under this chapter is not
 11 entitled to a hearing before the department to determine his
 12 rights, he may within forty-five (45) days, sue in the
 13 district court of any county where the alleged violation
 14 giving rise to the department's act, order, or ruling
 15 occurred, for new trial of the issues bearing upon the act,
 16 order, or ruling. After the trial the court may issue and
 17 enforce those orders, judgments, or decrees it considers
 18 proper, just, and equitable."

19 Section 15. Section 3-1728, R.C.M. 1947, is amended to
 20 read as follows:

21 "3-1728. Exchanges between manufacturers. Nothing in
 22 this act shall be construed to restrict or avoid sales or
 23 exchanges of commercial fertilizers or soil amendment to
 24 each other by importers, manufacturers, or manipulators who
 25 mix fertilizer materials for sale or as preventing the free

1 and unrestricted shipments of commercial fertilizer or soil
2 amendment to manufacturers, or manipulators who have
3 registered their brands and grades or licensed their
4 facilities as required by the provisions of this act."

5 Section 16. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

11 Section 17. Repealer. Sections 3-1714, 3-1715,
12 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, and 3-1726,
13 R.C.M. 1947, are repealed.

14 Section 18. Effective date. This act is effective
15 January 1, 1976.

-End-

Approved by Committee
on Agriculture Livestock
& Irrigation

HOUSE BILL NO. 678

INTRODUCED BY AAGESON, GUNDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND UPDATE COMMERCIAL FERTILIZER LAWS, MODIFYING AND ADDING DEFINITIONS, CHANGING LICENSING REQUIREMENTS, RAISING FERTILIZER INSPECTION FEES, ESTABLISHING INSPECTION FEES FOR SOIL AMENDMENTS, ALTERING THE TONNAGE REPORTING SYSTEM, ESTABLISHING AN EFFECTIVE DATE; AMENDING SECTIONS 3-1714.1, 3-1718, 3-1722, 3-1724, 3-1727, AND 3-1728, R.C.M. 1947, AND REPEALING SECTIONS 3-1714, 3-1715, 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, AND 3-1726, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 3-1714.2 that reads as follows:

3-1714.2. Definitions. As used in this chapter:

(1) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, yield or quality of the crop.

(a) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than

one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

(ii) has approximately eighty-five percent (85%) of its plant nutrient content present in the form of a single chemical compound, or

(iii) is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(b) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(c) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(d) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form, or in containers of greater than one thousand (1000) pounds.

(e) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of one thousand (1000) pounds or less.

1 (2) "Brand" means a term, design, or trademark used in
2 connection with one (1) or several grades of commercial
3 fertilizer.

4 (3) "Grade" means the percentages of total nitrogen,
5 available phosphorus or phosphoric acid, and soluble
6 potassium or soluble potash stated in whole numbers in the
7 same terms, order, and percentages as in the guaranteed
8 analysis. Provided, however, that fertilizer materials,
9 bone meal, manures and similar raw materials may be
10 guaranteed in fractional units.

11 (4) "Official sample" means any sample of commercial
12 fertilizer taken by the department of agriculture AND SO
13 DESIGNATED BY THE DEPARTMENT.

14 (5) "Ton" means a net weight of two thousand (2000)
15 pounds avoirdupois.

16 (6) "Percent or percentage" means the percentage by
17 weight.

18 (7) "Person" means an individual, partnership,
19 association, firm, or corporation.

20 (8) "Distribute" means to offer for sale, sell,
21 barter, or otherwise supply commercial fertilizers.

22 (9) "Distributor" means any person who distributes.

23 (10) "Registrant" means the person who registers
24 commercial fertilizer and/or soil amendment.

25 (11) "Manipulated manures" means substances composed

1 primarily of excreta, plant remains, or mixtures of such
2 substances which have been processed in any manner,
3 including the addition of plant nutrients, drying, grinding
4 and other means.

5 (12) "Soil amendment" means any material not included
6 under commercial fertilizer, or those products subject to
7 the Federal Insecticide, Fungicide or Rodenticide Act as
8 amended, which is added to soil or to plants for purposes of
9 influencing the growth, yield or quality of the crop, soil
10 flora or fauna or other soil characteristics.

11 (13) "Licensee" means any person who has obtained a
12 license from the department so he may legally distribute
13 commercial fertilizer other than specialty fertilizers or
14 soil amendment in this state.

15 Section 2. Section 3-1714.1, R.C.M. 1947, is
16 renumbered 3-1714.3, and is amended to read as follows:

17 "~~3-1714.1~~ 3-1714.3. Guaranteed analysis. (1) Until the
18 department prescribes the alternative form under subsection
19 (2) of this section, "guaranteed analysis" means the minimum
20 percentage of plant nutrients claimed in the following order
21 and form:

- 22 (a) Total nitrogen (N)-----percent
- 23 Available phosphoric acid (P2O5)-----percent
- 24 Soluble potash (K2O)-----percent

25 (b) For unacidulated mineral phosphatic materials and

1 basic slag, ~~guaranteed--analysis--includes--both-total-and~~
2 ~~available-phosphoric-acid-and-the-degree-of-fineness.~~

3 ~~(e)--For bone meal, tankage, and other organic~~
4 ~~phosphatic materials, guaranteed--analysis--includes-total~~
5 ~~phosphoric-acid the total phosphoric acid and/or degree of~~
6 ~~fineness may also be guaranteed.~~

7 ~~(d)(c)~~ Guarantees for plant nutrients other than
8 nitrogen, phosphorus, and potassium may be permitted or
9 required by rules adopted by the department. The guarantees
10 for other nutrients shall be expressed in the form of the
11 element. The sources of other nutrients including, but not
12 limited to, oxides, salt, and chelates, may be required to
13 be stated on the application for registration and may be
14 included as a parenthetical statement on the label. Other
15 beneficial substances or compounds, determinable by
16 laboratory methods, also may be guaranteed by permission of
17 the department. When any plant nutrients or other substances
18 or compounds are guaranteed, they are subject to inspection
19 and analysis in accord with the methods and regulations
20 prescribed by section 3-1718.

21 ~~(e)(d) Except when prohibited by regulation, potential~~
22 ~~potential basicity or acidity expressed in terms of calcium~~
23 ~~carbonate equivalent in multiples of one hundred (100)~~
24 ~~pounds per ton, may be shown when required by regulation.~~

25 (2) If the department finds, after public hearing,

1 that the requirement for expressing the guaranteed analysis
2 of phosphorus and potassium in elemental form would not
3 impose an economic hardship on distributors and users of
4 fertilizer by reason of conflicting labeling requirements
5 among the states, it may require by department rule that the
6 guaranteed analysis be in the following form:

- 7 Total nitrogen (N)-----percent
- 8 Available phosphorus (P)-----percent
- 9 Soluble potassium (K)-----percent

10 (3) The effective date of the rule may not be less
11 than six (6) months following the adoption of the rule. For
12 a period of two (2) years following the effective date of
13 the rule, the equivalent of phosphorus and potassium may
14 also be shown in the form of phosphoric acid and potash.
15 However, after the effective date of a rule requiring that
16 phosphorus and potassium be shown in the elemental form, the
17 guaranteed analysis for nitrogen, phosphorus, and potassium
18 is the grade for those elements.

19 (4) Soil amendments shall guarantee the minimum
20 quantity of each active ingredient in terms approved by the
21 department or in terms as set forth in rules issued by the
22 department. They shall also meet any other requirements
23 established by rule by the department."

24 Section 3. There is a new R.C.M. section numbered
25 3-1715.1 that reads as follows:

1 3-1715.1. Registration and licenses. (1) Each brand
 2 and grade of fertilizer and each soil amendment except
 3 unmanipulated animal and vegetable manures, shall be
 4 registered BY THE MANUFACTURER before distribution in this
 5 state. The application for registration shall be submitted
 6 to the department on a form furnished or approved by the
 7 department and shall be accompanied by a fee of ten dollars
 8 (\$10) per grade for each fertilizer and for each soil
 9 amendment with exception of specialty fertilizers in
 10 packages of ten (10) pounds or less which shall be
 11 registered at a fee of twenty-five dollars (\$25) each. Upon
 12 approval, the department shall furnish a copy of the
 13 registration to the applicant. All registrations expire on
 14 December 31 of each year. The application for registration
 15 shall include:

- 16 (a) the brand and grade;
- 17 (b) the guaranteed analysis;
- 18 (c) the source of each plant food element guaranteed;
- 19 (d) the name and address of the registrant;
- 20 (e) a copy or facsimile of each label and of
 21 promotional material WHEN REQUESTED BY THE DEPARTMENT.

22 Further, the department shall require the applicant to
 23 furnish replicated data, performed by a reputable
 24 investigator whose work is recognized as acceptable by the
 25 director of the agricultural experiment station or his

1 designee, verifying any claims for effectiveness or
 2 agricultural value of any fertilizer or soil amendment
 3 product which is not generally recognized as having the
 4 values claimed at the use rates recommended.

5 (2) A distributor may not be required to register any
 6 brand or grade of commercial fertilizer which is already
 7 registered under this section by another person.

8 (3) The plant nutrient content of every brand and
 9 grade of commercial fertilizer shall remain uniform for the
 10 period of registration.

11 (4) No person shall distribute in this state any type
 12 of fertilizer or soil amendment, except unmanipulated animal
 13 or vegetable manures, or specialty fertilizer, until a
 14 license to distribute has been obtained, for each facility
 15 distributing into this state and for each handling facility
 16 in this state, from the department upon payment of a fifty
 17 dollar (\$50) fee for each license. The department may
 18 exempt, by rule, manufacturers. All licenses expire on
 19 December 31 of each year and are subject to the following:

20 (a) The application for license shall be on forms
 21 provided by the department.

22 (b) The applicant shall provide a sample copy of
 23 labeling to be used. The form of labeling shall meet
 24 department standards, established by rule, and all labeling
 25 shall be in proper form.

1 (c) The licensee is not required to register a grade
 2 of fertilizer ~~blended--to--a--specific--customer--order~~
 3 REGISTERED BY THE MANUFACTURER, OR BLENDED TO GRADE FROM
 4 REGISTERED PRODUCTS BY THE LICENSEE.

5 (5) The manufacturer or distributor shall at all times
 6 deliver a uniform grade of fertilizer or soil amendment.
 7 When two (2) or more fertilizers are delivered in the same
 8 load, they shall be thoroughly and uniformly mixed unless
 9 they are in separate compartments.

10 Section 4. There is a new R.C.M. section numbered
 11 3-1716.1 that reads as follows:

12 3-1716.1. Labeling. (1) Any commercial fertilizer
 13 distributed in this state in ~~containers~~ PACKAGES shall have
 14 affixed to or printed on the container a label setting forth
 15 in clearly legible and conspicuous form:

- 16 (a) the net weight;
- 17 (b) the name and address of the manufacturer or
- 18 distributor guaranteeing the analysis;
- 19 (c) the brand and product name;
- 20 (d) the grade;
- 21 (e) the guaranteed analysis; and
- 22 (f) other requirements as established by rule.

23 (2) All commercial fertilizer delivered in this state
 24 in bulk, whether a manufactured grade or blended grade,
 25 shall be accompanied by a clearly legible document, which

1 shall be supplied to the purchaser at the time of delivery,
 2 and at the time his invoice is delivered. The document
 3 shall show:

- 4 (a) net weight;
- 5 (b) name and address of the distributor or
- 6 manufacturer guaranteeing the analysis;
- 7 ~~(c) grade;~~
- 8 ~~(d) guaranteed analysis;~~
- 9 ~~(e) net weight and guaranteed analysis of each~~

10 ~~ingredient added to a blend, together with spreading~~
 11 ~~instructions; and~~

12 (C) GUARANTEED ANALYSIS, OR, ON BLENDED FERTILIZER,
 13 THE NET WEIGHT AND GUARANTEED ANALYSIS OF EACH INGREDIENT
 14 ADDED; AND

15 ~~(f)~~ (D) other requirements as established by rule.

16 (3) When distributed in containers, soil amendments
 17 shall have a label affixed to or printed on the container.
 18 When delivered in bulk the label shall be clearly legible
 19 and shall accompany the delivery of the product. This label
 20 shall be supplied to the purchaser at the time of delivery
 21 and at the time of invoicing. The label shall contain the
 22 following information:

- 23 (a) net weight;
- 24 (b) name and address of the registrant or licensee who
- 25 is responsible for the product;

- 1 (c) brand and product name;
 2 (d) guaranteed analysis;
 3 (e) other requirements, such as particle size, as
 4 established by rule.

5 Section 5. There is a new R.C.M. section numbered
 6 3-1717.1 that reads as follows:

7 3-1717.1. Fees. (1) There shall be paid to the
 8 department fees on all commercial fertilizer, except
 9 specialty fertilizers sold in packages of ten (10) pounds or
 10 less, and unmanipulated animal and vegetable manures
 11 distributed in this state, provided that sales to
 12 manufacturers or exchanges between them are exempt. The
 13 fees are:

14 (a) Inspection, twenty cents (\$.20) per ton. The
 15 department may by rule after hearing, adjust the inspection
 16 fee not to exceed a maximum of twenty-five cents (\$.25) per
 17 ton to maintain adequate funding for the administration of
 18 this act. Any change in fee becomes effective on the first
 19 day of a reporting period. All registrants shall be given
 20 notice of any change in fees before the effective date.

21 (b) Assessment, the fee prescribed in section 3-1729.
 22 The assessment fee shall be used to fund educational and
 23 experimental programs as provided in sections 3-1729,
 24 3-1730, 3-1731 and 3-1734, R.C.M. 1947.

25 (2) There shall be paid to the department on all soil

1 amendments distributed in this state an inspection fee of
 2 ten cents (\$.10) per ton subject to the following
 3 provisions:

4 (a) sales to manufacturer's or exchanges between them
 5 are exempt; and

6 (b) when less than fifty (50) tons of registered soil
 7 amendment is sold per six (6) month period, there shall be
 8 paid to the department a fee of five dollars (\$5) per soil
 9 amendment per six (6) month period in lieu of the ten cents
 10 (\$.10) per ton fee. Inspection fees shall be used by the
 11 department for administration of this act.

12 (3) Every registrant AND LICENSEE who distributes a
 13 soil amendment or commercial fertilizer, except specialty
 14 fertilizer in packages of ten (10) pounds or less and
 15 unmanipulated manures, TO AN UNLICENSED OR UNREGISTERED
 16 PERSON, in this state shall file with the department on
 17 forms furnished OR APPROVED by the department a semiannual
 18 statement for the periods ending June 30 and December 31
 19 setting forth the number of net tons of each commercial
 20 fertilizer and/or soil amendment distributed in this state
 21 during the six (6) month period. The report is due on or
 22 before the thirtieth day of the month following the close of
 23 each period. The registrant shall pay the proper inspection
 24 fee at that time.

25 If the tonnage report is not filed and the payment of

1 inspection fee is not made within thirty (30) days after the
 2 end of the period a collection fee amounting to ten percent
 3 (10%) of the amount due but not less than ten dollars (\$10)
 4 shall be assessed against the registrant or licensee, and
 5 the amount of fees due shall constitute a debt and become
 6 the basis of a judgment against the registrant.

7 (4) All fees collected for licenses, registration and
 8 inspection, and moneys collected as penalties shall be
 9 deposited in the state treasury to the credit of the
 10 earmarked revenue fund for the purpose of administering this
 11 chapter, including the cost of equipment and facilities and
 12 the cost of inspecting, analyzing and examining commercial
 13 fertilizer and soil amendments manufactured or distributed
 14 in this state. Reserve funds may be invested by the
 15 department with interest credited to the earmarked revenue
 16 fund.

17 Section 6. Section 3-1718, R.C.M. 1947, is amended to
 18 read as follows:

19 "3-1718. Inspection, sampling, analysis. (1) The
 20 department, in cooperation with the agricultural experiment
 21 station of Montana state university, shall sample, inspect,
 22 analyze, and test commercial fertilizers and soil amendments
 23 distributed in this state at a time and place and to an
 24 extent necessary to determine whether the commercial
 25 fertilizers or soil amendments are in compliance with this

1 chapter. The department may enter upon any public or private
 2 premises during regular business hours in order to have
 3 access to commercial fertilizers or soil amendments subject
 4 to this chapter.

5 (2) The methods of analysis and sampling shall be
 6 those adopted by the department from sources such as those
 7 of the association of official analytical chemists. The
 8 results of analysis, together with additional information
 9 the department considers advisable, shall be transmitted
 10 promptly to the manufacturer and to the dealer or person in
 11 whose possession the product was sampled.

12 (3) The department, in determining whether any
 13 commercial fertilizer is deficient in plant food, or soil
 14 amendment is deficient, shall be guided solely by the
 15 official sample obtained and analyzed as provided for in
 16 paragraphs (1) and (2) of this section.

17 (4) If on the basis of an inspection or the analysis
 18 of the official sample a commercial fertilizer or soil
 19 amendment is found to be subject to penalty or other legal
 20 action, the department shall forward to the registrant
 21 notification of the violation at least ten (10) days before
 22 its report is made public. If during that period no
 23 adequate evidence to the contrary is made available to the
 24 department, the report becomes official. Upon request, the
 25 department shall furnish to the registrant a portion of any

1 sample found subject to penalty or other legal action."

2 Section 7. There is a new R.C.M. section numbered
3 3-1720.1 that reads as follows:

4 3-1720.1. Misbranding and adulteration -- prohibition.

5 No person shall distribute a misbranded or adulterated
6 fertilizer or soil amendment. (1) A commercial fertilizer
7 or soil amendment is misbranded if it:

8 (a) carries any false or misleading statement upon or
9 attached to the container, or if false or misleading
10 statements concerning its agricultural value are made on the
11 container or in any advertising matter accompanying or
12 associated with the product;

13 (b) is distributed under the name of another product;

14 (c) is not labeled as required in section 3-1716 and
15 in accordance with rules prescribed under this act; or

16 (d) purports to be or is represented as a commercial
17 fertilizer, or is represented as containing a plant nutrient
18 or commercial fertilizer, unless that plant nutrient or
19 commercial fertilizer conforms to the definition of
20 identity, if any, prescribed by rule of the department. In
21 adopting this type rule the department shall give due regard
22 to commonly accepted definitions and official fertilizer
23 terms as issued by the association of American plant food
24 control officials.

25 Section 8. There is a new R.C.M. section numbered

1 3-1721.1 that reads as follows:

2 3-1721.1. Licensee ~~tonnage~~ reports -- confidentiality
3 -- inspection -- failure to file. ~~(1) -- Each licensee shall~~
4 ~~file a semiannual report covering the periods -- January -- 1~~
5 ~~through -- June 30 and July 1 through December 31. -- The report~~
6 ~~shall include:~~

7 ~~(a) -- beginning --- and --- ending --- commercial --- fertilizer~~
8 ~~inventory tonnage by grade;~~

9 ~~(b) -- data showing tonnages received by grade during the~~
10 ~~period; and~~

11 ~~(c) -- the name of the supplier;~~

12 ~~All -- reports shall be on forms provided by the department or~~
13 ~~in a form approved by the department. -- Reports -- are -- due -- in~~
14 ~~the -- department office not later than thirty (30) days after~~
15 ~~the close of the period;~~

16 (1) Information contained in the reports shall be held
17 confidential by the department. Summary data published by
18 the department shall be in a form that will not disclose
19 details of any operation or business.

20 (2) The department has the right to inspect and audit,
21 during normal business hours, each licensee's records for
22 the purpose of verifying tonnage reports.

23 (3) Failure to file an accurate report constitutes a
24 violation of this act and may be punished by fine,
25 revocation of license, or both.

1 Section 9. Section 3-1722, R.C.M. 1947, is amended to
2 read as follows:

3 "3-1722. Publications. The department shall publish at
4 least annually information concerning the sales of
5 commercial fertilizers, and soil amendments together with
6 data on their production and use as it considers advisable,
7 and shall report the results of the analysis based on
8 official samples of commercial fertilizers and soil
9 amendments sold in this state."

10 Section 10. There is a new R.C.M. section numbered
11 3-1723.1 that reads as follows:

12 3-1723.1. Rules -- adoption by department. (1) The
13 department may adopt those rules for commercial fertilizer
14 and soil amendment which are specifically authorized in this
15 act and those other reasonable rules necessary for the
16 efficient enforcement of this act.

17 (2) In adopting rules the department shall follow
18 procedures prescribed in the Montana Administrative
19 Procedure Act.

20 Section 11. Section 3-1724, R.C.M. 1947, is amended to
21 read as follows:

22 "3-1724. Cancellation or refusal of registration or
23 licenses. (1) The department may cancel the registration of
24 any commercial fertilizer or soil amendment and may refuse
25 to register any commercial fertilizer or soil amendment upon

1 satisfactory evidence that the registrant has used
2 fraudulent or deceptive practices in the evasion or
3 attempted evasion of this chapter or any rules adopted under
4 it. However, no registration may be revoked or refused
5 until the registrant is given the opportunity to ~~appear--for~~
6 ~~a--hearing--by-the-department,--as-provided-in-section-3-1723~~
7 amend his application or correct other practices.

8 (2) The department may cancel any license or refuse to
9 license any person when it has satisfactory evidence that
10 the person has used fraudulent or deceptive practice in the
11 evasion or attempted evasion of this chapter or any rules
12 adopted under it. However, no license may be revoked or
13 refused until the person involved is given the opportunity
14 to appear for a hearing by the department."

15 Section 12. There is a new R.C.M. section numbered
16 3-1725.1 that reads as follows:

17 3-1725.1. Enforcement -- embargo order --
18 condemnation. (1) When the department has reasonable cause
19 to believe any lot of commercial fertilizer or soil
20 amendment is in violation of this act or a rule adopted by
21 the department, it may issue and enforce a written or
22 printed embargo order, requiring the person holding the
23 commercial fertilizer or soil amendment not to dispose of it
24 in any manner until written permission is granted by the
25 department or the court. The department shall release the

1 product when this act and the rules of the department have
 2 been complied with. If compliance is not obtained within
 3 thirty (30) days, the department may begin, or upon the
 4 request of the registrant or the person holding the product
 5 shall begin, proceedings for condemnation.

6 (2) Commercial fertilizer or soil amendment not in
 7 compliance with this act or the rules of the department may
 8 be seized on complaint of the department to a district court
 9 in the area in which the product is located. If the court
 10 finds the product in violation of this act and orders its
 11 condemnation, the fertilizer or amendment shall be disposed
 12 of in any manner consistent with the quality of the product
 13 and state law. The disposition of the product may not be
 14 ordered by the court without first giving the owner or
 15 person from whom the product was seized an opportunity to
 16 apply to the court for release of the product or for
 17 permission to process or relabel the product to bring it
 18 into compliance with this act.

19 Section 13. There is a new R.C.M. section numbered
 20 3-1726.1 that reads as follows:

21 3-1726.1. Plant food deficiency and commercial value.
 22 (1) Penalty for nitrogen, available phosphoric acid or
 23 phosphorus and potash or potassium. If the analysis shows
 24 that a commercial fertilizer is deficient (a) in one or more
 25 if its guaranteed primary plant foods (NPK) beyond the

1 "investigational allowance" as established by regulation, or

2 (b) if the overall index value of the fertilizer is
 3 below the level established by regulations, a penalty of two
 4 (2) times the commercial value of that deficiency, as
 5 determined by the dealer or manufacturers' price on the date
 6 of sampling of the deficiency or deficiencies, shall be
 7 assessed. When a commercial fertilizer is subject to a
 8 penalty under both (a) and (b) the larger penalty applies.

9 (2) Penalty for other deficiencies -- deficiencies
 10 beyond the investigational allowances as established by
 11 regulation in any other constituent covered under section
 12 3-1714.3 (1)(b), (c) and (d), R.C.M. 1947, which the
 13 registrant is required to or may guarantee, shall be
 14 evaluated and penalties shall be assessed at two times the
 15 commercial value of the deficiency as determined by the
 16 dealers' retail price on the date of sampling.

17 (3) Nothing contained in this section shall prevent
 18 any person from appealing the department's decision to a
 19 court of competent jurisdiction.

20 (4) All penalties assessed under this section shall be
 21 paid to the consumer of the lot, NOT TO EXCEED ONE HUNDRED
 22 (100) TONS, of commercial fertilizer represented by the
 23 sample analyzed within three (3) months after the date of
 24 notice from the department to the registrant or licensee.
 25 If at the end of the three (3) month period, the consumer

1 cannot be found, receipts shall be taken and promptly
2 forwarded to the department for deposit in the earmarked
3 revenue fund as provided in section 3-1717.1.

4 Section 14. Section 3-1727, R.C.M. 1947, is amended to
5 read as follows:

6 "3-1727. Violations-enforcement proceedings --
7 judicial review. (1) If it appears from the examination of
8 any commercial fertilizer that this chapter or the rules
9 adopted under this chapter have been violated, the
10 department shall give notice of the violations to the
11 registrant, licensee, distributor, or possessor from whom
12 the sample was taken. A person notified shall be given an
13 opportunity to be heard under rules of the department. If it
14 appears after a hearing, either in the presence or absence
15 of the person notified, that this chapter or rules issued
16 under this chapter have been violated, the department may
17 certify the facts to the proper prosecuting attorney.

18 (2) A person who violates this chapter or the rules
19 adopted under this chapter, or who obstructs, prevents, or
20 attempts to prevent the department from performing its duty
21 under this chapter, is guilty of a misdemeanor and shall be
22 fined not less than three hundred dollars (\$300) nor more
23 than five hundred dollars (\$500) for the first violation,
24 and not less than three hundred dollars (\$300) nor more than
25 one thousand dollars (\$1,000) for a subsequent violation. In

1 all prosecutions under this chapter involving the
2 composition of a lot of commercial fertilizer, a certified
3 copy of the official analysis of the department is prima
4 facie evidence of the composition.

5 (3) Nothing in this chapter requires the department to
6 report for prosecution or for the beginning of seizure
7 proceedings minor violations of this chapter when it
8 believes that the public interest will be best served by a
9 suitable notice of warning in writing.

10 (4) A prosecuting attorney to whom a violation is
11 reported shall prosecute the violator in a court of
12 competent jurisdiction without delay.

13 (5) The department may apply for and the court may
14 grant a temporary or permanent injunction restraining any
15 person from violating or continuing to violate any of the
16 provisions of this chapter or any rule adopted under the
17 chapter notwithstanding the existence of other remedies at
18 law. The injunction shall be issued without bond.

19 (6) If a person adversely affected by an act, order, or
20 ruling made by the department under this chapter is not
21 entitled to a hearing before the department to determine his
22 rights, he may within forty-five (45) days, sue in the
23 district court of any county where the alleged violation
24 giving rise to the department's act, order, or ruling
25 occurred, for new trial of the issues bearing upon the act,

1 order, or ruling. After the trial the court may issue and
2 enforce those orders, judgments, or decrees it considers
3 proper, just, and equitable."

4 Section 15. Section 3-1728, R.C.M. 1947, is amended to
5 read as follows:

6 "3-1728. Exchanges between manufacturers. Nothing in
7 this act shall be construed to restrict or avoid sales or
8 exchanges of commercial fertilizers or soil amendment to
9 each other by importers, manufacturers, or manipulators who
10 mix fertilizer materials for sale or as preventing the free
11 and unrestricted shipments of commercial fertilizer or soil
12 amendment to manufacturers, or manipulators who have
13 registered their brands and grades or licensed their
14 facilities as required by the provisions of this act."

15 Section 16. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

21 Section 17. Repealer. Sections 3-1714, 3-1715,
22 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, and 3-1726,
23 R.C.M. 1947, are repealed.

24 Section 18. Effective date. This act is effective
25 January 1, 1976.

-End-
-23-

HOUSE BILL NO. 678

INTRODUCED BY AAGESON, GUNDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND UPDATE COMMERCIAL FERTILIZER LAWS, MODIFYING AND ADDING DEFINITIONS, CHANGING LICENSING REQUIREMENTS, RAISING FERTILIZER INSPECTION FEES, ESTABLISHING INSPECTION FEES FOR SOIL AMENDMENTS, ALTERING THE TONNAGE REPORTING SYSTEM, ESTABLISHING AN EFFECTIVE DATE; AMENDING SECTIONS 3-1714.1, 3-1718, 3-1722, 3-1724, 3-1727, AND 3-1728, R.C.M. 1947, AND REPEALING SECTIONS 3-1714, 3-1715, 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, AND 3-1726, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 3-1714.2 that reads as follows:

3-1714.2. Definitions. As used in this chapter:

(1) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, yield or quality of the crop.

(a) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than

one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

(ii) has approximately eighty-five percent (85%) of its plant nutrient content present in the form of a single chemical compound, or

(iii) is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(b) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(c) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(d) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form, or in containers of greater than one thousand (1000) pounds.

(e) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of one thousand (1000) pounds or less.

1 (2) "Brand" means a term, design, or trademark used in
 2 connection with one (1) or several grades of commercial
 3 fertilizer.

4 (3) "Grade" means the percentages of total nitrogen,
 5 available phosphorus or phosphoric acid, and soluble
 6 potassium or soluble potash stated in whole numbers in the
 7 same terms, order, and percentages as in the guaranteed
 8 analysis. Provided, however, that fertilizer materials,
 9 bone meal, manures and similar raw materials may be
 10 guaranteed in fractional units.

11 (4) "Official sample" means any sample of commercial
 12 fertilizer taken by the department of agriculture AND SO
 13 DESIGNATED BY THE DEPARTMENT.

14 (5) "Ton" means a net weight of two thousand (2000)
 15 pounds avoirdupois.

16 (6) "Percent or percentage" means the percentage by
 17 weight.

18 (7) "Person" means an individual, partnership,
 19 association, firm, or corporation.

20 (8) "Distribute" means to offer for sale, sell,
 21 barter, or otherwise supply commercial fertilizers.

22 (9) "Distributor" means any person who distributes.

23 (10) "Registrant" means the person who registers
 24 commercial fertilizer and/or soil amendment.

25 (11) "Manipulated manures" means substances composed

1 primarily of excreta, plant remains, or mixtures of such
 2 substances which have been processed in any manner,
 3 including the addition of plant nutrients, drying, grinding
 4 and other means.

5 (12) "Soil amendment" means any material not included
 6 under commercial fertilizer, or those products subject to
 7 the Federal Insecticide, Fungicide or Rodenticide Act as
 8 amended, which is added to soil or to plants for purposes of
 9 influencing the growth, yield or quality of the crop, soil
 10 flora or fauna or other soil characteristics.

11 (13) "Licensee" means any person who has obtained a
 12 license from the department so he may legally distribute
 13 commercial fertilizer other than specialty fertilizers or
 14 soil amendment in this state.

15 Section 2. Section 3-1714.1, R.C.M. 1947, is
 16 renumbered 3-1714.3, and is amended to read as follows:

17 ~~"3-1714.1~~ 3-1714.3. Guaranteed analysis. (1) Until the
 18 department prescribes the alternative form under subsection
 19 (2) of this section, "guaranteed analysis" means the minimum
 20 percentage of plant nutrients claimed in the following order
 21 and form:

22 (a) Total nitrogen (N)-----percent
 23 Available phosphoric acid (P2O5)-----percent
 24 Soluble potash (K2O)-----percent

25 (b) For unacidulated mineral phosphatic materials and

1 basic slag, ~~guaranteed--analysis--includes--both--total--and~~
2 ~~available--phosphoric--acid--and--the--degree--of--fineness:~~

3 ~~(e)--For bone meal, tankage, and other organic~~
4 ~~phosphatic materials, guaranteed--analysis--includes--total~~
5 ~~phosphoric--acid the total phosphoric acid and/or degree of~~
6 ~~fineness may also be guaranteed.~~

7 ~~(d)(c)~~ Guarantees for plant nutrients other than
8 nitrogen, phosphorus, and potassium may be permitted or
9 required by rules adopted by the department. The guarantees
10 for other nutrients shall be expressed in the form of the
11 element. The sources of other nutrients including, but not
12 limited to, oxides, salt, and chelates, may be required to
13 be stated on the application for registration and may be
14 included as a parenthetical statement on the label. Other
15 beneficial substances or compounds, determinable by
16 laboratory methods, also may be guaranteed by permission of
17 the department. When any plant nutrients or other substances
18 or compounds are guaranteed, they are subject to inspection
19 and analysis in accord with the methods and regulations
20 prescribed by section 3-1718.

21 ~~(e)(d) Except when prohibited by regulation, potential~~
22 ~~potential basicity or acidity expressed in terms of calcium~~
23 ~~carbonate equivalent in multiples of one hundred (100)~~
24 ~~pounds per ton, may be shown when required by regulation.~~

25 (2) If the department finds, after public hearing,

1 that the requirement for expressing the guaranteed analysis
2 of phosphorus and potassium in elemental form would not
3 impose an economic hardship on distributors and users of
4 fertilizer by reason of conflicting labeling requirements
5 among the states, it may require by department rule that the
6 guaranteed analysis be in the following form:

- 7 Total nitrogen (N)-----percent
- 8 Available phosphorus (P)-----percent
- 9 Soluble potassium (K)-----percent

10 (3) The effective date of the rule may not be less
11 than six (6) months following the adoption of the rule. For
12 a period of two (2) years following the effective date of
13 the rule, the equivalent of phosphorus and potassium may
14 also be shown in the form of phosphoric acid and potash.
15 However, after the effective date of a rule requiring that
16 phosphorus and potassium be shown in the elemental form, the
17 guaranteed analysis for nitrogen, phosphorus, and potassium
18 is the grade for those elements.

19 (4) Soil amendments shall guarantee the minimum
20 quantity of each active ingredient in terms approved by the
21 department or in terms as set forth in rules issued by the
22 department. They shall also meet any other requirements
23 established by rule by the department."

24 Section 3. There is a new R.C.M. section numbered
25 3-1715.1 that reads as follows:

1 3-1715.1. Registration and licenses. (1) Each brand
 2 and grade of fertilizer and each soil amendment except
 3 unmanipulated animal and vegetable manures, shall be
 4 registered BY THE MANUFACTURER before distribution in this
 5 state. The application for registration shall be submitted
 6 to the department on a form furnished or approved by the
 7 department and shall be accompanied by a fee of ten dollars
 8 (\$10) per grade for each fertilizer and for each soil
 9 amendment with exception of specialty fertilizers in
 10 packages of ten (10) pounds or less which shall be
 11 registered at a fee of twenty-five dollars (\$25) each. Upon
 12 approval, the department shall furnish a copy of the
 13 registration to the applicant. All registrations expire on
 14 December 31 of each year. The application for registration
 15 shall include:

- 16 (a) the brand and grade;
- 17 (b) the guaranteed analysis;
- 18 (c) the source of each plant food element guaranteed;
- 19 (d) the name and address of the registrant;
- 20 (e) a copy or facsimile of each label and of
 21 promotional material WHEN REQUESTED BY THE DEPARTMENT.

22 Further, the department shall require the applicant to
 23 furnish replicated data, performed by a reputable
 24 investigator whose work is recognized as acceptable by the
 25 director of the agricultural experiment station or his

1 designee, verifying any claims for effectiveness or
 2 agricultural value of any fertilizer or soil amendment
 3 product which is not generally recognized as having the
 4 values claimed at the use rates recommended.

5 (2) A distributor may not be required to register any
 6 brand or grade of commercial fertilizer which is already
 7 registered under this section by another person.

8 (3) The plant nutrient content of every brand and
 9 grade of commercial fertilizer shall remain uniform for the
 10 period of registration.

11 (4) No person shall distribute in this state any type
 12 of fertilizer or soil amendment, except unmanipulated animal
 13 or vegetable manures, or specialty fertilizer, until a
 14 license to distribute has been obtained, for each facility
 15 distributing into this state and for each handling facility
 16 in this state, from the department upon payment of a fifty
 17 dollar (\$50) fee for each license. The department may
 18 exempt, by rule, manufacturers. All licenses expire on
 19 December 31 of each year and are subject to the following:

20 (a) The application for license shall be on forms
 21 provided by the department.

22 (b) The applicant shall provide a sample copy of
 23 labeling to be used. The form of labeling shall meet
 24 department standards, established by rule, and all labeling
 25 shall be in proper form.

1 (c) The licensee is not required to register a grade
 2 of fertilizer ~~blended--to--a---specific---customer---order~~
 3 REGISTERED BY THE MANUFACTURER, OR BLENDED TO GRADE FROM
 4 REGISTERED PRODUCTS BY THE LICENSEE.

5 (5) The manufacturer or distributor shall at all times
 6 deliver a uniform grade of fertilizer or soil amendment.
 7 When two (2) or more fertilizers are delivered in the same
 8 load, they shall be thoroughly and uniformly mixed unless
 9 they are in separate compartments.

10 Section 4. There is a new R.C.M. section numbered
 11 3-1716.1 that reads as follows:

12 3-1716.1. Labeling. (1) Any commercial fertilizer
 13 distributed in this state in ~~containers~~ PACKAGES shall have
 14 affixed to or printed on the container a label setting forth
 15 in clearly legible and conspicuous form:

- 16 (a) the net weight;
- 17 (b) the name and address of the manufacturer or
 18 distributor guaranteeing the analysis;
- 19 (c) the brand and product name;
- 20 (d) the grade;
- 21 (e) the guaranteed analysis; and
- 22 (f) other requirements as established by rule.

23 (2) All commercial fertilizer delivered in this state
 24 in bulk, whether a manufactured grade or blended grade,
 25 shall be accompanied by a clearly legible document, which

1 shall be supplied to the purchaser at the time of delivery,
 2 and at the time his invoice is delivered. The document
 3 shall show:

- 4 (a) net weight;
- 5 (b) name and address of the distributor or
 6 manufacturer guaranteeing the analysis;
- 7 ~~(c) grade;~~
- 8 ~~(d) guaranteed analysis;~~
- 9 ~~(e) net weight and guaranteed analysis of each~~
 10 ~~ingredient added to a blend, together with spreading~~
 11 ~~instructions; and~~

12 (C) GUARANTEED ANALYSIS, OR, ON BLENDED FERTILIZER,
 13 THE NET WEIGHT AND GUARANTEED ANALYSIS OF EACH INGREDIENT
 14 ADDED; AND

15 ~~(f)~~ (D) other requirements as established by rule.

16 (3) When distributed in containers, soil amendments
 17 shall have a label affixed to or printed on the container.
 18 When delivered in bulk the label shall be clearly legible
 19 and shall accompany the delivery of the product. This label
 20 shall be supplied to the purchaser at the time of delivery
 21 and at the time of invoicing. The label shall contain the
 22 following information:

- 23 (a) net weight;
- 24 (b) name and address of the registrant or licensee who
 25 is responsible for the product;

- 1 (c) brand and product name;
- 2 (d) guaranteed analysis;
- 3 (e) other requirements, such as particle size, as
- 4 established by rule.

5 Section 5. There is a new R.C.M. section numbered
6 3-1717.1 that reads as follows:

7 3-1717.1. Fees. (1) There shall be paid to the
8 department fees on all commercial fertilizer, except
9 specialty fertilizers sold in packages of ten (10) pounds or
10 less, and unmanipulated animal and vegetable manures
11 distributed in this state, provided that sales to
12 manufacturers or exchanges between them are exempt. The
13 fees are:

14 (a) Inspection, twenty cents (\$.20) per ton. The
15 department may by rule after hearing, adjust the inspection
16 fee not to exceed a maximum of twenty-five cents (\$.25) per
17 ton to maintain adequate funding for the administration of
18 this act. Any change in fee becomes effective on the first
19 day of a reporting period. All registrants shall be given
20 notice of any change in fees before the effective date.

21 (b) Assessment, the fee prescribed in section 3-1729.
22 The assessment fee shall be used to fund educational and
23 experimental programs as provided in sections 3-1729,
24 3-1730, 3-1731 and 3-1734, R.C.M. 1947.

25 (2) There shall be paid to the department on all soil

1 amendments distributed in this state an inspection fee of
2 ten cents (\$.10) per ton subject to the following
3 provisions:

4 (a) sales to manufacturer's or exchanges between them
5 are exempt; and

6 (b) when less than fifty (50) tons of registered soil
7 amendment is sold per six (6) month period, there shall be
8 paid to the department a fee of five dollars (\$5) per soil
9 amendment per six (6) month period in lieu of the ten cents
10 (\$.10) per ton fee. Inspection fees shall be used by the
11 department for administration of this act.

12 (3) Every registrant AND LICENSEE who distributes a
13 soil amendment or commercial fertilizer, except specialty
14 fertilizer in packages of ten (10) pounds or less and
15 unmanipulated manures, TO AN UNLICENSED OR UNREGISTERED
16 PERSON, in this state shall file with the department on
17 forms furnished OR APPROVED by the department a semiannual
18 statement for the periods ending June 30 and December 31
19 setting forth the number of net tons of each commercial
20 fertilizer and/or soil amendment distributed in this state
21 during the six (6) month period. The report is due on or
22 before the thirtieth day of the month following the close of
23 each period. The registrant shall pay the proper inspection
24 fee at that time.

25 If the tonnage report is not filed and the payment of

1 inspection fee is not made within thirty (30) days after the
 2 end of the period a collection fee amounting to ten percent
 3 (10%) of the amount due but not less than ten dollars (\$10)
 4 shall be assessed against the registrant or licensee, and
 5 the amount of fees due shall constitute a debt and become
 6 the basis of a judgment against the registrant.

7 (4) All fees collected for licenses, registration and
 8 inspection, and moneys collected as penalties shall be
 9 deposited in the state treasury to the credit of the
 10 earmarked revenue fund for the purpose of administering this
 11 chapter, including the cost of equipment and facilities and
 12 the cost of inspecting, analyzing and examining commercial
 13 fertilizer and soil amendments manufactured or distributed
 14 in this state. Reserve funds may be invested by the
 15 department with interest credited to the earmarked revenue
 16 fund.

17 Section 6. Section 3-1718, R.C.M. 1947, is amended to
 18 read as follows:

19 "3-1718. Inspection, sampling, analysis. (1) The
 20 department, in cooperation with the agricultural experiment
 21 station of Montana state university, shall sample, inspect,
 22 analyze, and test commercial fertilizers and soil amendments
 23 distributed in this state at a time and place and to an
 24 extent necessary to determine whether the commercial
 25 fertilizers or soil amendments are in compliance with this

1 chapter. The department may enter upon any public or private
 2 premises during regular business hours in order to have
 3 access to commercial fertilizers or soil amendments subject
 4 to this chapter.

5 (2) The methods of analysis and sampling shall be
 6 those adopted by the department from sources such as those
 7 of the association of official analytical chemists. The
 8 results of analysis, together with additional information
 9 the department considers advisable, shall be transmitted
 10 promptly to the manufacturer and to the dealer or person in
 11 whose possession the product was sampled.

12 (3) The department, in determining whether any
 13 commercial fertilizer is deficient in plant food, or soil
 14 amendment is deficient, shall be guided solely by the
 15 official sample obtained and analyzed as provided for in
 16 paragraphs (1) and (2) of this section.

17 (4) If on the basis of an inspection or the analysis
 18 of the official sample a commercial fertilizer or soil
 19 amendment is found to be subject to penalty or other legal
 20 action, the department shall forward to the registrant
 21 notification of the violation at least ten (10) days before
 22 its report is made public. If during that period no
 23 adequate evidence to the contrary is made available to the
 24 department, the report becomes official. Upon request, the
 25 department shall furnish to the registrant a portion of any

1 sample found subject to penalty or other legal action."

2 Section 7. There is a new R.C.M. section numbered
3 3-1720.1 that reads as follows:

4 3-1720.1. Misbranding and adulteration -- prohibition.
5 No person shall distribute a misbranded or adulterated
6 fertilizer or soil amendment. (1) A commercial fertilizer
7 or soil amendment is misbranded if it:

8 (a) carries any false or misleading statement upon or
9 attached to the container, or if false or misleading
10 statements concerning its agricultural value are made on the
11 container or in any advertising matter accompanying or
12 associated with the product;

13 (b) is distributed under the name of another product;

14 (c) is not labeled as required in section 3-1716 and
15 in accordance with rules prescribed under this act; or

16 (d) purports to be or is represented as a commercial
17 fertilizer, or is represented as containing a plant nutrient
18 or commercial fertilizer, unless that plant nutrient or
19 commercial fertilizer conforms to the definition of
20 identity, if any, prescribed by rule of the department. In
21 adopting this type rule the department shall give due regard
22 to commonly accepted definitions and official fertilizer
23 terms as issued by the association of American plant food
24 control officials.

25 Section 8. There is a new R.C.M. section numbered

1 3-1721.1 that reads as follows:

2 3-1721.1. Licensee tonnage reports -- confidentiality
3 -- inspection -- failure to file. ~~(1) -- Each licensee shall
4 file a semiannual report covering the periods -- January -- 1
5 through -- June -- 30 and July 1 through December 31. -- The report
6 shall include:~~

7 ~~(a) -- beginning -- and -- ending -- commercial -- fertilizer
8 inventory -- tonnage -- by -- grade;~~

9 ~~(b) -- data -- showing -- tonnages -- received -- by -- grade -- during -- the
10 period; -- and~~

11 ~~(c) -- the -- name -- of -- the -- supplier;~~

12 ~~All -- reports -- shall -- be -- on -- forms -- provided -- by -- the -- department -- or
13 in -- a -- form -- approved -- by -- the -- department. -- Reports -- are -- due -- in
14 the -- department -- office -- not -- later -- than -- thirty -- (30) -- days -- after
15 the -- close -- of -- the -- period;~~

16 (1) Information contained in the reports shall be held
17 confidential by the department. Summary data published by
18 the department shall be in a form that will not disclose
19 details of any operation or business.

20 (2) The department has the right to inspect and audit,
21 during normal business hours, each licensee's records for
22 the purpose of verifying tonnage reports.

23 (3) Failure to file an accurate report constitutes a
24 violation of this act and may be punished by fine,
25 revocation of license, or both.

1 Section 9. Section 3-1722, R.C.M. 1947, is amended to
2 read as follows:

3 "3-1722. Publications. The department shall publish at
4 least annually information concerning the sales of
5 commercial fertilizers, and soil amendments together with
6 data on their production and use as it considers advisable,
7 and shall report the results of the analysis based on
8 official samples of commercial fertilizers and soil
9 amendments sold in this state."

10 Section 10. There is a new R.C.M. section numbered
11 3-1723.1 that reads as follows:

12 3-1723.1. Rules -- adoption by department. (1) The
13 department may adopt those rules for commercial fertilizer
14 and soil amendment which are specifically authorized in this
15 act and those other reasonable rules necessary for the
16 efficient enforcement of this act.

17 (2) In adopting rules the department shall follow
18 procedures prescribed in the Montana Administrative
19 Procedure Act.

20 Section 11. Section 3-1724, R.C.M. 1947, is amended to
21 read as follows:

22 "3-1724. Cancellation or refusal of registration or
23 licenses. (1) The department may cancel the registration of
24 any commercial fertilizer or soil amendment and may refuse
25 to register any commercial fertilizer or soil amendment upon

1 satisfactory evidence that the registrant has used
2 fraudulent or deceptive practices in the evasion or
3 attempted evasion of this chapter or any rules adopted under
4 it. However, no registration may be revoked or refused
5 until the registrant is given the opportunity to ~~appear--for~~
6 ~~a--hearing--by-the-department,-as-provided-in-section-3-1723~~
7 amend his application or correct other practices.

8 (2) The department may cancel any license or refuse to
9 license any person when it has satisfactory evidence that
10 the person has used fraudulent or deceptive practice in the
11 evasion or attempted evasion of this chapter or any rules
12 adopted under it. However, no license may be revoked or
13 refused until the person involved is given the opportunity
14 to appear for a hearing by the department."

15 Section 12. There is a new R.C.M. section numbered
16 3-1725.1 that reads as follows:

17 3-1725.1. Enforcement -- embargo order --
18 condemnation. (1) When the department has reasonable cause
19 to believe any lot of commercial fertilizer or soil
20 amendment is in violation of this act or a rule adopted by
21 the department, it may issue and enforce a written or
22 printed embargo order, requiring the person holding the
23 commercial fertilizer or soil amendment not to dispose of it
24 in any manner until written permission is granted by the
25 department or the court. The department shall release the

1 product when this act and the rules of the department have
 2 been complied with. If compliance is not obtained within
 3 thirty (30) days, the department may begin, or upon the
 4 request of the registrant or the person holding the product
 5 shall begin, proceedings for condemnation.

6 (2) Commercial fertilizer or soil amendment not in
 7 compliance with this act or the rules of the department may
 8 be seized on complaint of the department to a district court
 9 in the area in which the product is located. If the court
 10 finds the product in violation of this act and orders its
 11 condemnation, the fertilizer or amendment shall be disposed
 12 of in any manner consistent with the quality of the product
 13 and state law. The disposition of the product may not be
 14 ordered by the court without first giving the owner or
 15 person from whom the product was seized an opportunity to
 16 apply to the court for release of the product or for
 17 permission to process or relabel the product to bring it
 18 into compliance with this act.

19 Section 13. There is a new R.C.M. section numbered
 20 3-1726.1 that reads as follows:

21 3-1726.1. Plant food deficiency and commercial value.

22 (1) Penalty for nitrogen, available phosphoric acid or
 23 phosphorus and potash or potassium. If the analysis shows
 24 that a commercial fertilizer is deficient (a) in one or more
 25 if its guaranteed primary plant foods (NPK) beyond the

1 "investigational allowance" as established by regulation, or
 2 (b) if the overall index value of the fertilizer is
 3 below the level established by regulations, a penalty of two
 4 (2) times the commercial value of that deficiency, as
 5 determined by the dealer or manufacturers' price on the date
 6 of sampling of the deficiency or deficiencies, shall be
 7 assessed. When a commercial fertilizer is subject to a
 8 penalty under both (a) and (b) the larger penalty applies.

9 (2) Penalty for other deficiencies -- deficiencies
 10 beyond the investigational allowances as established by
 11 regulation in any other constituent covered under section
 12 3-1714.3 (1)(b), (c) and (d), R.C.M. 1947, which the
 13 registrant is required to or may guarantee, shall be
 14 evaluated and penalties shall be assessed at two times the
 15 commercial value of the deficiency as determined by the
 16 dealers' retail price on the date of sampling.

17 (3) Nothing contained in this section shall prevent
 18 any person from appealing the department's decision to a
 19 court of competent jurisdiction.

20 (4) All penalties assessed under this section shall be
 21 paid to the consumer of the lot, NOT TO EXCEED ONE HUNDRED
 22 (100) TONS, of commercial fertilizer represented by the
 23 sample analyzed within three (3) months after the date of
 24 notice from the department to the registrant or licensee.
 25 If at the end of the three (3) month period, the consumer

1 cannot be found, receipts shall be taken and promptly
2 forwarded to the department for deposit in the earmarked
3 revenue fund as provided in section 3-1717.1.

4 Section 14. Section 3-1727, R.C.M. 1947, is amended to
5 read as follows:

6 "3-1727. Violations-enforcement proceedings --
7 judicial review. (1) If it appears from the examination of
8 any commercial fertilizer that this chapter or the rules
9 adopted under this chapter have been violated, the
10 department shall give notice of the violations to the
11 registrant, licensee, distributor, or possessor from whom
12 the sample was taken. A person notified shall be given an
13 opportunity to be heard under rules of the department. If it
14 appears after a hearing, either in the presence or absence
15 of the person notified, that this chapter or rules issued
16 under this chapter have been violated, the department may
17 certify the facts to the proper prosecuting attorney.

18 (2) A person who violates this chapter or the rules
19 adopted under this chapter, or who obstructs, prevents, or
20 attempts to prevent the department from performing its duty
21 under this chapter, is guilty of a misdemeanor and shall be
22 fined not less than three hundred dollars (\$300) nor more
23 than five hundred dollars (\$500) for the first violation,
24 and not less than three hundred dollars (\$300) nor more than
25 one thousand dollars (\$1,000) for a subsequent violation. In

1 all prosecutions under this chapter involving the
2 composition of a lot of commercial fertilizer, a certified
3 copy of the official analysis of the department is prima
4 facie evidence of the composition.

5 (3) Nothing in this chapter requires the department to
6 report for prosecution or for the beginning of seizure
7 proceedings minor violations of this chapter when it
8 believes that the public interest will be best served by a
9 suitable notice of warning in writing.

10 (4) A prosecuting attorney to whom a violation is
11 reported shall prosecute the violator in a court of
12 competent jurisdiction without delay.

13 (5) The department may apply for and the court may
14 grant a temporary or permanent injunction restraining any
15 person from violating or continuing to violate any of the
16 provisions of this chapter or any rule adopted under the
17 chapter notwithstanding the existence of other remedies at
18 law. The injunction shall be issued without bond.

19 (6) If a person adversely affected by an act, order, or
20 ruling made by the department under this chapter is not
21 entitled to a hearing before the department to determine his
22 rights, he may within forty-five (45) days, sue in the
23 district court of any county where the alleged violation
24 giving rise to the department's act, order, or ruling
25 occurred, for new trial of the issues bearing upon the act,

1 order, or ruling. After the trial the court may issue and
2 enforce those orders, judgments, or decrees it considers
3 proper, just, and equitable."

4 Section 15. Section 3-1728, R.C.M. 1947, is amended to
5 read as follows:

6 "3-1728. Exchanges between manufacturers. Nothing in
7 this act shall be construed to restrict or avoid sales or
8 exchanges of commercial fertilizers or soil amendment to
9 each other by importers, manufacturers, or manipulators who
10 mix fertilizer materials for sale or as preventing the free
11 and unrestricted shipments of commercial fertilizer or soil
12 amendment to manufacturers, or manipulators who have
13 registered their brands and grades or licensed their
14 facilities as required by the provisions of this act."

15 Section 16. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

21 Section 17. Repealer. Sections 3-1714, 3-1715,
22 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, and 3-1726,
23 R.C.M. 1947, are repealed.

24 Section 18. Effective date. This act is effective
25 January 1, 1976.

March 17, 1975

SENATE COMMITTEE OF THE WHOLE
AMENDMENTS TO HOUSE BILL NO. 678

That House Bill No. 678, third reading, be amended as follows:

1. Amend page 12, section 5, line 23.
Following: "registrant"
Insert: "or licensee"
Following: "proper"
Strike: "inspection"
2. Amend page 12, section 5, line 23.
Following: "proper"
Strike: "inspection"
3. Amend page 12, section 5 (3), line 24.
Strike: "fee"
Insert: "fees, as set forth in subsection (1) of this section,"
4. Amend page 13, section 5 (3), line 1.
Strike: "inspection fee"
Insert: "fees"
5. Amend page 13, section 5 (3), line 6.
Following: "registrant"
Insert: "or licensee"
6. Amend page 15, section 7 (1) (c), line 14.
Following: "section"
Strike: "3-1716"
Insert: "3-1716.1"

Corrected copy 3/19/75

March 17, 1975

SENATE COMMITTEE OF THE WHOLE

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Insert: "fees, as set forth in subsection (1) of this section,"
4. Amend page 13, section 5, line 1.
Strike: "inspection fee"
Insert: "fees"
5. Amend page 13, section 5, line 6.
Following: "registrant"
Insert: "or licensee"
6. Amend page 15, section 7, line 14.
Following: "section"
Strike: "3-1716"
Insert: "3-1716.1"

HOUSE BILL NO. 678

INTRODUCED BY AAGESON, GUNDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND UPDATE COMMERCIAL FERTILIZER LAWS, MODIFYING AND ADDING DEFINITIONS, CHANGING LICENSING REQUIREMENTS, RAISING FERTILIZER INSPECTION FEES, ESTABLISHING INSPECTION FEES FOR SOIL AMENDMENTS, ALTERING THE TONNAGE REPORTING SYSTEM, ESTABLISHING AN EFFECTIVE DATE; AMENDING SECTIONS 3-1714.1, 3-1718, 3-1722, 3-1724, 3-1727, AND 3-1728, R.C.M. 1947, AND REPEALING SECTIONS 3-1714, 3-1715, 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, AND 3-1726, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 3-1714.2 that reads as follows:

3-1714.2. Definitions. As used in this chapter:

(1) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, yield or quality of the crop.

(a) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than

one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

(ii) has approximately eighty-five percent (85%) of its plant nutrient content present in the form of a single chemical compound, or

(iii) is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

(b) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(c) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(d) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form, or in containers of greater than one thousand (1000) pounds.

(e) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of one thousand (1000) pounds or less.

1 (2) "Brand" means a term, design, or trademark used in
 2 connection with one (1) or several grades of commercial
 3 fertilizer.

4 (3) "Grade" means the percentages of total nitrogen,
 5 available phosphorus or phosphoric acid, and soluble
 6 potassium or soluble potash stated in whole numbers in the
 7 same terms, order, and percentages as in the guaranteed
 8 analysis. Provided, however, that fertilizer materials,
 9 bone meal, manures and similar raw materials may be
 10 guaranteed in fractional units.

11 (4) "Official sample" means any sample of commercial
 12 fertilizer taken by the department of agriculture AND SO
 13 DESIGNATED BY THE DEPARTMENT.

14 (5) "Ton" means a net weight of two thousand (2000)
 15 pounds avoirdupois.

16 (6) "Percent or percentage" means the percentage by
 17 weight.

18 (7) "Person" means an individual, partnership,
 19 association, firm, or corporation.

20 (8) "Distribute" means to offer for sale, sell,
 21 barter, or otherwise supply commercial fertilizers.

22 (9) "Distributor" means any person who distributes.

23 (10) "Registrant" means the person who registers
 24 commercial fertilizer and/or soil amendment.

25 (11) "Manipulated manures" means substances composed

1 primarily of excreta, plant remains, or mixtures of such
 2 substances which have been processed in any manner,
 3 including the addition of plant nutrients, drying, grinding
 4 and other means.

5 (12) "Soil amendment" means any material not included
 6 under commercial fertilizer, or those products subject to
 7 the Federal Insecticide, Fungicide or Rodenticide Act as
 8 amended, which is added to soil or to plants for purposes of
 9 influencing the growth, yield or quality of the crop, soil
 10 flora or fauna or other soil characteristics.

11 (13) "Licensee" means any person who has obtained a
 12 license from the department so he may legally distribute
 13 commercial fertilizer other than specialty fertilizers or
 14 soil amendment in this state.

15 Section 2. Section 3-1714.1, R.C.M. 1947, is
 16 renumbered 3-1714.3, and is amended to read as follows:

17 ~~"3-1714.1 3-1714.3.~~ Guaranteed analysis. (1) Until the
 18 department prescribes the alternative form under subsection
 19 (2) of this section, "guaranteed analysis" means the minimum
 20 percentage of plant nutrients claimed in the following order
 21 and form:

- 22 (a) Total nitrogen (N) _____ percent
 23 Available phosphoric acid (P2O5) _____ percent
 24 Soluble potash (K2O) _____ percent
 25 (b) For unacidulated mineral phosphatic materials and

1 basic slag, ~~guaranteed analysis includes both total and~~
2 ~~available phosphoric acid and the degree of fineness.~~

3 ~~(c) For bone meal, tankage, and other organic~~
4 ~~phosphatic materials, guaranteed analysis includes total~~
5 ~~phosphoric acid the total phosphoric acid and/or degree of~~
6 ~~fineness may also be guaranteed.~~

7 ~~(d)(c)~~ Guarantees for plant nutrients other than
8 nitrogen, phosphorus, and potassium may be permitted or
9 required by rules adopted by the department. The guarantees
10 for other nutrients shall be expressed in the form of the
11 element. The sources of other nutrients including, but not
12 limited to, oxides, salt, and chelates, may be required to
13 be stated on the application for registration and may be
14 included as a parenthetical statement on the label. Other
15 beneficial substances or compounds, determinable by
16 laboratory methods, also may be guaranteed by permission of
17 the department. When any plant nutrients or other substances
18 or compounds are guaranteed, they are subject to inspection
19 and analysis in accord with the methods and regulations
20 prescribed by section 3-1718.

21 ~~(e)(d) Except when prohibited by regulation, potential~~
22 ~~potential basicity or acidity expressed in terms of calcium~~
23 ~~carbonate equivalent in multiples of one hundred (100)~~
24 ~~pounds per ton, may be shown when required by regulation.~~

25 (2) If the department finds, after public hearing,

1 that the requirement for expressing the guaranteed analysis
2 of phosphorus and potassium in elemental form would not
3 impose an economic hardship on distributors and users of
4 fertilizer by reason of conflicting labeling requirements
5 among the states, it may require by department rule that the
6 guaranteed analysis be in the following form:

- 7 Total nitrogen (N)-----percent
- 8 Available phosphorus (P)-----percent
- 9 Soluble potassium (K)-----percent

10 (3) The effective date of the rule may not be less
11 than six (6) months following the adoption of the rule. For
12 a period of two (2) years following the effective date of
13 the rule, the equivalent of phosphorus and potassium may
14 also be shown in the form of phosphoric acid and potash.
15 However, after the effective date of a rule requiring that
16 phosphorus and potassium be shown in the elemental form, the
17 guaranteed analysis for nitrogen, phosphorus, and potassium
18 is the grade for those elements.

19 (4) Soil amendments shall guarantee the minimum
20 quantity of each active ingredient in terms approved by the
21 department or in terms as set forth in rules issued by the
22 department. They shall also meet any other requirements
23 established by rule by the department."

24 Section 3. There is a new K.C.M. section numbered
25 3-1715.1 that reads as follows:

1 3-1715.1. Registration and licenses. (1) Each brand
 2 and grade of fertilizer and each soil amendment except
 3 unmanipulated animal and vegetable manures, shall be
 4 registered BY THE MANUFACTURER before distribution in this
 5 state. The application for registration shall be submitted
 6 to the department on a form furnished or approved by the
 7 department and shall be accompanied by a fee of ten dollars
 8 (\$10) per grade for each fertilizer and for each soil
 9 amendment with exception of specialty fertilizers in
 10 packages of ten (10) pounds or less which shall be
 11 registered at a fee of twenty-five dollars (\$25) each. Upon
 12 approval, the department shall furnish a copy of the
 13 registration to the applicant. All registrations expire on
 14 December 31 of each year. The application for registration
 15 shall include:

- 16 (a) the brand and grade;
- 17 (b) the guaranteed analysis;
- 18 (c) the source of each plant food element guaranteed;
- 19 (d) the name and address of the registrant;
- 20 (e) a copy or facsimile of each label and of
 21 promotional material WHEN REQUESTED BY THE DEPARTMENT.

22 Further, the department shall require the applicant to
 23 furnish replicated data, performed by a reputable
 24 investigator whose work is recognized as acceptable by the
 25 director of the agricultural experiment station or his

1 designee, verifying any claims for effectiveness or
 2 agricultural value of any fertilizer or soil amendment
 3 product which is not generally recognized as having the
 4 values claimed at the use rates recommended.

5 (2) A distributor may not be required to register any
 6 brand or grade of commercial fertilizer which is already
 7 registered under this section by another person.

8 (3) The plant nutrient content of every brand and
 9 grade of commercial fertilizer shall remain uniform for the
 10 period of registration.

11 (4) No person shall distribute in this state any type
 12 of fertilizer or soil amendment, except unmanipulated animal
 13 or vegetable manures, or specialty fertilizer, until a
 14 license to distribute has been obtained, for each facility
 15 distributing into this state and for each handling facility
 16 in this state, from the department upon payment of a fifty
 17 dollar (\$50) fee for each license. The department may
 18 exempt, by rule, manufacturers. All licenses expire on
 19 December 31 of each year and are subject to the following:

20 (a) The application for license shall be on forms
 21 provided by the department.

22 (b) The applicant shall provide a sample copy of
 23 labeling to be used. The form of labeling shall meet
 24 department standards, established by rule, and all labeling
 25 shall be in proper form.

1 (c) The licensee is not required to register a grade
 2 of fertilizer ~~blended to a specific customer order~~
 3 REGISTERED BY THE MANUFACTURER, OR BLENDED TO GRADE FROM
 4 REGISTERED PRODUCTS BY THE LICENSEE.

5 (5) The manufacturer or distributor shall at all times
 6 deliver a uniform grade of fertilizer or soil amendment.
 7 When two (2) or more fertilizers are delivered in the same
 8 load, they shall be thoroughly and uniformly mixed unless
 9 they are in separate compartments.

10 Section 4. There is a new R.C.M. section numbered
 11 3-1716.1 that reads as follows:

12 3-1716.1. Labeling. (1) Any commercial fertilizer
 13 distributed in this state in ~~containers~~ PACKAGES shall have
 14 affixed to or printed on the container a label setting forth
 15 in clearly legible and conspicuous form:

- 16 (a) the net weight;
- 17 (b) the name and address of the manufacturer or
- 18 distributor guaranteeing the analysis;
- 19 (c) the brand and product name;
- 20 (d) the grade;
- 21 (e) the guaranteed analysis; and
- 22 (f) other requirements as established by rule.

23 (2) All commercial fertilizer delivered in this state
 24 in bulk, whether a manufactured grade or blended grade,
 25 shall be accompanied by a clearly legible document, which

1 shall be supplied to the purchaser at the time of delivery,
 2 and at the time his invoice is delivered. The document
 3 shall show:

- 4 (a) net weight;
- 5 (b) name and address of the distributor or
- 6 manufacturer guaranteeing the analysis;
- 7 ~~(c) grade;~~
- 8 ~~(d) guaranteed analysis;~~
- 9 ~~(e) net weight and guaranteed analysis of each~~
 10 ~~ingredient added to a blend, together with spreading~~
 11 ~~instructions; and~~

12 (C) GUARANTEED ANALYSIS, OR, ON BLENDED FERTILIZER,
 13 THE NET WEIGHT AND GUARANTEED ANALYSIS OF EACH INGREDIENT
 14 ADDED; AND

15 ~~(f) (D)~~ other requirements as established by rule.

16 (3) When distributed in containers, soil amendments
 17 shall have a label affixed to or printed on the container.
 18 When delivered in bulk the label shall be clearly legible
 19 and shall accompany the delivery of the product. This label
 20 shall be supplied to the purchaser at the time of delivery
 21 and at the time of invoicing. The label shall contain the
 22 following information:

- 23 (a) net weight;
- 24 (b) name and address of the registrant or licensee who
- 25 is responsible for the product;

- 1 (c) brand and product name;
- 2 (d) guaranteed analysis;
- 3 (e) other requirements, such as particle size, as
- 4 established by rule.

5 Section 5. There is a new R.C.M. section numbered

6 3-1717.1 that reads as follows:

7 3-1717.1. Fees. (1) There shall be paid to the

8 department fees on all commercial fertilizer, except

9 specialty fertilizers sold in packages of ten (10) pounds or

10 less, and unmanipulated animal and vegetable manures

11 distributed in this state, provided that sales to

12 manufacturers or exchanges between them are exempt. The

13 fees are:

14 (a) Inspection, twenty cents (\$.20) per ton. The

15 department may by rule after hearing, adjust the inspection

16 fee not to exceed a maximum of twenty-five cents (\$.25) per

17 ton to maintain adequate funding for the administration of

18 this act. Any change in fee becomes effective on the first

19 day of a reporting period. All registrants shall be given

20 notice of any change in fees before the effective date.

21 (b) Assessment, the fee prescribed in section 3-1729.

22 The assessment fee shall be used to fund educational and

23 experimental programs as provided in sections 3-1729,

24 3-1730, 3-1731 and 3-1734, R.C.M. 1947.

25 (2) There shall be paid to the department on all soil

1 amendments distributed in this state an inspection fee of

2 ten cents (\$.10) per ton subject to the following

3 provisions:

4 (a) sales to manufacturer's or exchanges between them

5 are exempt; and

6 (b) when less than fifty (50) tons of registered soil

7 amendment is sold per six (6) month period, there shall be

8 paid to the department a fee of five dollars (\$5) per soil

9 amendment per six (6) month period in lieu of the ten cents

10 (\$.10) per ton fee. Inspection fees shall be used by the

11 department for administration of this act.

12 (3) Every registrant AND LICENSEE who distributes a

13 soil amendment or commercial fertilizer, except specialty

14 fertilizer in packages of ten (10) pounds or less and

15 unmanipulated manures, TO AN UNLICENSED OR UNREGISTERED

16 PERSON, in this state shall file with the department on

17 forms furnished OR APPROVED by the department a semiannual

18 statement for the periods ending June 30 and December 31

19 setting forth the number of net tons of each commercial

20 fertilizer and/or soil amendment distributed in this state

21 during the six (6) month period. The report is due on or

22 before the thirtieth day of the month following the close of

23 each period. The registrant OR LICENSEE shall pay the

24 proper ~~inspection fee~~ FEES, AS SET FORTH IN SUBSECTION (1)

25 OF THIS SECTION, at that time.

1 If the tonnage report is not filed and the payment of
 2 ~~inspection fee~~ FEES is not made within thirty (30) days
 3 after the end of the period a collection fee amounting to
 4 ten percent (10%) of the amount due but not less than ten
 5 dollars (\$10) shall be assessed against the registrant or
 6 licensee, and the amount of fees due shall constitute a debt
 7 and become the basis of a judgment against the registrant OR
 8 LICENSEE.

9 (4) All fees collected for licenses, registration and
 10 inspection, and moneys collected as penalties shall be
 11 deposited in the state treasury to the credit of the
 12 earmarked revenue fund for the purpose of administering this
 13 chapter, including the cost of equipment and facilities and
 14 the cost of inspecting, analyzing and examining commercial
 15 fertilizer and soil amendments manufactured or distributed
 16 in this state. Reserve funds may be invested by the
 17 department with interest credited to the earmarked revenue
 18 fund.

19 Section 6. Section 3-1718, R.C.M. 1947, is amended to
 20 read as follows:

21 "3-1718. Inspection, sampling, analysis. (1) The
 22 department, in cooperation with the agricultural experiment
 23 station of Montana state university, shall sample, inspect,
 24 analyze, and test commercial fertilizers and soil amendments
 25 distributed in this state at a time and place and to an

1 extent necessary to determine whether the commercial
 2 fertilizers or soil amendments are in compliance with this
 3 chapter. The department may enter upon any public or private
 4 premises during regular business hours in order to have
 5 access to commercial fertilizers or soil amendments subject
 6 to this chapter.

7 (2) The methods of analysis and sampling shall be
 8 those adopted by the department from sources such as those
 9 of the association of official analytical chemists. The
 10 results of analysis, together with additional information
 11 the department considers advisable, shall be transmitted
 12 promptly to the manufacturer and to the dealer or person in
 13 whose possession the product was sampled.

14 (3) The department, in determining whether any
 15 commercial fertilizer is deficient in plant food, or soil
 16 amendment is deficient, shall be guided solely by the
 17 official sample obtained and analyzed as provided for in
 18 paragraphs (1) and (2) of this section.

19 (4) If on the basis of an inspection or the analysis
 20 of the official sample a commercial fertilizer or soil
 21 amendment is found to be subject to penalty or other legal
 22 action, the department shall forward to the registrant
 23 notification of the violation at least ten (10) days before
 24 its report is made public. If during that period no
 25 adequate evidence to the contrary is made available to the

1 department, the report becomes official. Upon request, the
 2 department shall furnish to the registrant a portion of any
 3 sample found subject to penalty or other legal action."

4 Section 7. There is a new R.C.M. section numbered
 5 3-1720.1 that reads as follows:

6 3-1720.1. Misbranding and adulteration — prohibition.
 7 No person shall distribute a misbranded or adulterated
 8 fertilizer or soil amendment. (1) A commercial fertilizer
 9 or soil amendment is misbranded if it:

10 (a) carries any false or misleading statement upon or
 11 attached to the container, or if false or misleading
 12 statements concerning its agricultural value are made on the
 13 container or in any advertising matter accompanying or
 14 associated with the product;

15 (b) is distributed under the name of another product;

16 (c) is not labeled as required in section ~~3-1716~~
 17 3-1716.1 and in accordance with rules prescribed under this
 18 act; or

19 (d) purports to be or is represented as a commercial
 20 fertilizer, or is represented as containing a plant nutrient
 21 or commercial fertilizer, unless that plant nutrient or
 22 commercial fertilizer conforms to the definition of
 23 identity, if any, prescribed by rule of the department. In
 24 adopting this type rule the department shall give due regard
 25 to commonly accepted definitions and official fertilizer

1 terms as issued by the association of American plant food
 2 control officials.

3 Section 8. There is a new R.C.M. section numbered
 4 3-1721.1 that reads as follows:

5 3-1721.1. Licensee ~~tonnage~~ reports — confidentiality
 6 — inspection — failure to file. ~~(1) Each licensee shall~~
 7 ~~file a semiannual report covering the periods January 1~~
 8 ~~through June 30 and July 1 through December 31. The report~~
 9 ~~shall include:~~

10 ~~(a) beginning and ending commercial fertilizer~~
 11 ~~inventory tonnage by grade;~~

12 ~~(b) data showing tonnages received by grade during the~~
 13 ~~period; and~~

14 ~~(c) the name of the supplier.~~

15 ~~All reports shall be on forms provided by the department or~~
 16 ~~in a form approved by the department. Reports are due in~~
 17 ~~the department office not later than thirty (30) days after~~
 18 ~~the close of the period.~~

19 (1) Information contained in the reports shall be held
 20 confidential by the department. Summary data published by
 21 the department shall be in a form that will not disclose
 22 details of any operation or business.

23 (2) The department has the right to inspect and audit,
 24 during normal business hours, each licensee's records for
 25 the purpose of verifying tonnage reports.

1 (3) Failure to file an accurate report constitutes a
2 violation of this act and may be punished by fine,
3 revocation of license, or both.

4 Section 9. Section 3-1722, R.C.M. 1947, is amended to
5 read as follows:

6 "3-1722. Publications. The department shall publish at
7 least annually information concerning the sales of
8 commercial fertilizers, and soil amendments together with
9 data on their production and use as it considers advisable,
10 and shall report the results of the analysis based on
11 official samples of commercial fertilizers and soil
12 amendments sold in this state."

13 Section 10. There is a new R.C.M. section numbered
14 3-1723.1 that reads as follows:

15 3-1723.1. Rules — adoption by department. (1) The
16 department may adopt those rules for commercial fertilizer
17 and soil amendment which are specifically authorized in this
18 act and those other reasonable rules necessary for the
19 efficient enforcement of this act.

20 (2) In adopting rules the department shall follow
21 procedures prescribed in the Montana Administrative
22 Procedure Act.

23 Section 11. Section 3-1724, R.C.M. 1947, is amended to
24 read as follows:

25 "3-1724. Cancellation or refusal of registration or

1 licenses. (1) The department may cancel the registration of
2 any commercial fertilizer or soil amendment and may refuse
3 to register any commercial fertilizer or soil amendment upon
4 satisfactory evidence that the registrant has used
5 fraudulent or deceptive practices in the evasion or
6 attempted evasion of this chapter or any rules adopted under
7 it. However, no registration may be revoked or refused
8 until the registrant is given the opportunity to ~~appear for~~
9 ~~a hearing by the department, as provided in section 3-1723~~
10 amend his application or correct other practices.

11 (2) The department may cancel any license or refuse to
12 license any person when it has satisfactory evidence that
13 the person has used fraudulent or deceptive practice in the
14 evasion or attempted evasion of this chapter or any rules
15 adopted under it. However, no license may be revoked or
16 refused until the person involved is given the opportunity
17 to appear for a hearing by the department."

18 Section 12. There is a new R.C.M. section numbered
19 3-1725.1 that reads as follows:

20 3-1725.1. Enforcement — embargo order —
21 condemnation. (1) When the department has reasonable cause
22 to believe any lot of commercial fertilizer or soil
23 amendment is in violation of this act or a rule adopted by
24 the department, it may issue and enforce a written or
25 printed embargo order, requiring the person holding the

1 commercial fertilizer or soil amendment not to dispose of it
 2 in any manner until written permission is granted by the
 3 department or the court. The department shall release the
 4 product when this act and the rules of the department have
 5 been complied with. If compliance is not obtained within
 6 thirty (30) days, the department may begin, or upon the
 7 request of the registrant or the person holding the product
 8 shall begin, proceedings for condemnation.

9 (2) Commercial fertilizer or soil amendment not in
 10 compliance with this act or the rules of the department may
 11 be seized on complaint of the department to a district court
 12 in the area in which the product is located. If the court
 13 finds the product in violation of this act and orders its
 14 condemnation, the fertilizer or amendment shall be disposed
 15 of in any manner consistent with the quality of the product
 16 and state law. The disposition of the product may not be
 17 ordered by the court without first giving the owner or
 18 person from whom the product was seized an opportunity to
 19 apply to the court for release of the product or for
 20 permission to process or relabel the product to bring it
 21 into compliance with this act.

22 Section 13. There is a new R.C.M. section numbered
 23 3-1726.1 that reads as follows:

24 3-1726.1. Plant food deficiency and commercial value.
 25 (1) . Penalty for nitrogen, available phosphoric acid or

1 phosphorus and potash or potassium. If the analysis shows
 2 that a commercial fertilizer is deficient (a) in one or more
 3 if its guaranteed primary plant foods (NPK) beyond the
 4 "investigational allowance" as established by regulation, or
 5 (b) if the overall index value of the fertilizer is
 6 below the level established by regulations, a penalty of two
 7 (2) times the commercial value of that deficiency, as
 8 determined by the dealer or manufacturers' price on the date
 9 of sampling of the deficiency or deficiencies, shall be
 10 assessed. When a commercial fertilizer is subject to a
 11 penalty under both (a) and (b) the larger penalty applies.

12 (2) Penalty for other deficiencies — deficiencies
 13 beyond the investigational allowances as established by
 14 regulation in any other constituent covered under section
 15 3-1714.3 (1) (b), (c) and (d), R.C.M. 1947, which the
 16 registrant is required to or may guarantee, shall be
 17 evaluated and penalties shall be assessed at two times the
 18 commercial value of the deficiency as determined by the
 19 dealers' retail price on the date of sampling.

20 (3) Nothing contained in this section shall prevent
 21 any person from appealing the department's decision to a
 22 court of competent jurisdiction.

23 (4) All penalties assessed under this section shall be
 24 paid to the consumer of the lot, NOT TO EXCEED ONE HUNDRED
 25 (100) TONS, of commercial fertilizer represented by the

1 sample analyzed within three (3) months after the date of
 2 notice from the department to the registrant or licensee.
 3 If at the end of the three (3) month period, the consumer
 4 cannot be found, receipts shall be taken and promptly
 5 forwarded to the department for deposit in the earmarked
 6 revenue fund as provided in section 3-1717.1.

7 Section 14. Section 3-1727, E.C.M. 1947, is amended to
 8 read as follows:

9 *3-1727. Violations-enforcement proceedings —
 10 judicial review. (1) If it appears from the examination of
 11 any commercial fertilizer that this chapter or the rules
 12 adopted under this chapter have been violated, the
 13 department shall give notice of the violations to the
 14 registrant, licensee, distributor, or possessor from whom
 15 the sample was taken. A person notified shall be given an
 16 opportunity to be heard under rules of the department. If it
 17 appears after a hearing, either in the presence or absence
 18 of the person notified, that this chapter or rules issued
 19 under this chapter have been violated, the department may
 20 certify the facts to the proper prosecuting attorney.

21 (2) A person who violates this chapter or the rules
 22 adopted under this chapter, or who obstructs, prevents, or
 23 attempts to prevent the department from performing its duty
 24 under this chapter, is guilty of a misdemeanor and shall be
 25 fined not less than three hundred dollars (\$300) nor more

1 than five hundred dollars (\$500) for the first violation,
 2 and not less than three hundred dollars (\$300) nor more than
 3 one thousand dollars (\$1,000) for a subsequent violation. In
 4 all prosecutions under this chapter involving the
 5 composition of a lot of commercial fertilizer, a certified
 6 copy of the official analysis of the department is prima
 7 facie evidence of the composition.

8 (3) Nothing in this chapter requires the department to
 9 report for prosecution or for the beginning of seizure
 10 proceedings minor violations of this chapter when it
 11 believes that the public interest will be best served by a
 12 suitable notice of warning in writing.

13 (4) A prosecuting attorney to whom a violation is
 14 reported shall prosecute the violator in a court of
 15 competent jurisdiction without delay.

16 (5) The department may apply for and the court may
 17 grant a temporary or permanent injunction restraining any
 18 person from violating or continuing to violate any of the
 19 provisions of this chapter or any rule adopted under the
 20 chapter notwithstanding the existence of other remedies at
 21 law. The injunction shall be issued without bond.

22 (6) If a person adversely affected by an act, order, or
 23 ruling made by the department under this chapter is not
 24 entitled to a hearing before the department to determine his
 25 rights, he may within forty-five (45) days, sue in the

1 district court of any county where the alleged violation
 2 giving rise to the department's act, order, or ruling
 3 occurred, for new trial of the issues bearing upon the act,
 4 order, or ruling. After the trial the court may issue and
 5 enforce those orders, judgments, or decrees it considers
 6 proper, just, and equitable."

7 Section 15. Section 3-1728, R.C.M. 1947, is amended to
 8 read as follows:

9 "3-1728. Exchanges between manufacturers. Nothing in
 10 this act shall be construed to restrict or avoid sales or
 11 exchanges of commercial fertilizers or soil amendment to
 12 each other by importers, manufacturers, or manipulators who
 13 mix fertilizer materials for sale or as preventing the free
 14 and unrestricted shipments of commercial fertilizer or soil
 15 amendment to manufacturers, or manipulators who have
 16 registered their brands and grades or licensed their
 17 facilities as required by the provisions of this act."

18 Section 16. Severability. If a part of this act is
 19 invalid, all valid parts that are severable from the invalid
 20 part remain in effect. If a part of this act is invalid in
 21 one or more of its applications, the part remains in effect
 22 in all valid applications that are severable from the
 23 invalid applications.

24 Section 17. Repealer. Sections 3-1714, 3-1715,
 25 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, and 3-1726,

1 R.C.M. 1947, are repealed.

2 Section 18. Effective date. This act is effective
 3 January 1, 1976.

-End-