



ANALYSIS

- | | |
|--|---|
| <p>Title</p> <ol style="list-style-type: none"> 1. Short Title and commencement 2. Interpretation 3. Application of Act 4. Appointment of Analysts and Inspectors 5. Registration of fertilisers 6. Period of registration 7. Re-registration 8. Refusal of registration 9. Revocation of registration 10. Appeals 11. Agricultural chemicals 12. Prohibition of use of term "fertiliser" in certain circumstances 13. Marking of packages 14. Special mixtures 15. Record to be kept of fertilisers sold otherwise than in marked packages 16. Brands and names of fertilisers on premises of vendor to be available for inspection 17. Advice note on sale of fertilisers | <ol style="list-style-type: none"> 18. Advice note on sale of special mixtures 19. Advice note on sale of fertilisers containing agricultural chemicals 20. Advice note on delivery of fertiliser 21. Implied warranty on sale of fertiliser 22. Sample of fertiliser to be sent to Inspector on request 23. Inspector may take sample 24. How sample to be taken 25. Sample to be sent to Analyst 26. Analysis of sample and certificate of analysis 27. Analysis on request of buyer 28. Evidence in proceedings 29. Independent analysis 30. Returns to be submitted by proprietors 31. Publication of details of fertilisers 32. Remedy by a vendor against prior vendor 33. Tampering with sample 34. False representation as to fertiliser 35. Offences and penalties 36. Regulations 37. Repeals and savings <p style="text-align: center;">Schedule</p> |
|--|---|

1960, No. 33

**An Act to consolidate and amend certain enactments of the
General Assembly of New Zealand relating to fertilisers**

[17 October 1960]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Fertilisers Act 1960.

(2) This Act shall come into force on the first day of June, nineteen hundred and sixty-one.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Additive” means any substance, not being a fertiliser, which is added to any fertiliser, or which is mixed with any fertiliser, whether mechanically or by hand, or which, by means of any chemical process, is incorporated in any fertiliser:

“Agricultural chemical” means an agricultural chemical as defined in the Agricultural Chemicals Act 1959:

“Analyst” means an Analyst appointed under this Act:

“Director-General” means the Director-General of Agriculture:

“Fertiliser” means any substance which is in a state suitable for application to land or plants for the purpose of increasing the growth or productivity of beneficial plants and which contains, in the aggregate, not less than three per cent of fertilising elements; but does not include animal manure, or animal or vegetable matter either in a fresh or partly decomposed condition, unless any such material has been so dried or otherwise treated that decomposition is arrested until the material is applied to land or plants:

“Fertilising element” means—

(a) The chemical element nitrogen (N); or

(b) The chemical element phosphorus (P); or

(c) The chemical element potassium (K); or

(d) Any other chemical element which the Governor-General declares by Order in Council to be a fertilising element for the purposes of this Act:

“Importer” means the person who enters any fertiliser through Customs; and “to import” has a corresponding meaning:

“Inspector” means an Inspector appointed under this Act:

“Manufacturer” means any person who manufactures fertiliser for the purpose of sale; and includes a person who packs fertiliser for sale or who mixes substances, whether mechanically or by hand, to form a fertiliser of more than one component; and “to manufacture” has a corresponding meaning:

“Package” means anything in or by which any fertiliser may be cased, covered, enclosed, contained, or packed, but does not include any building, vehicle, or other thing used for the storage or carriage of fertiliser in bulk:

“Percentage”, when used with reference to the amount of any fertilising element, or of any component of any fertiliser, means the proportion that the weight of the fertilising element or component bears to the total weight of the substance of which it is a part:

“Premises” includes any ship, truck, aircraft, or vehicle of any description:

“Proprietor”, in relation to any fertiliser manufactured in New Zealand, means the manufacturer thereof, and in relation to any fertiliser not manufactured in New Zealand, means the importer thereof:

“Sale” includes barter and also includes contracting, offering, exposing, or attempting to sell, or having in possession for sale, or delivering by way of gift or sample, or causing or allowing to be sold; and “to sell” has a corresponding meaning:

“Special mixture” means a fertiliser manufactured in accordance with the instructions of the intending user and to which the provisions of section 14 of this Act apply:

“Vendor” means any person who, in the ordinary course of his business, sells or offers for sale, either on his own account or on behalf of any other person, any fertiliser.

(2) For the purpose of computing the total amount of fertilising elements that is required to be present before any substance is a fertiliser within the meaning of this Act, no account shall be taken of any such fertilising element that is present in the substance in an amount of less than the amount prescribed in that behalf in respect of that fertilising element by regulations under this Act.

Cf. 1927, No. 38, s. 2 (1957 Reprint, Vol 4, p. 895); 1948, No. 3, s. 2

3. Application of Act—Except as provided by section 12, section 24, and section 31 of this Act, nothing in this Act shall apply to the sale of any fertiliser where the quantity sold in one transaction is less than five hundredweight. **AMD. 19**

Cf. 1927, No. 38, s. 3

No. 3.

4. Appointment of Analysts and Inspectors—There may from time to time be appointed under the Public Service Act 1912 such Analysts and Inspectors as are required for the purposes of this Act, who shall have the powers and shall perform the duties set out in this Act, and shall have such other powers and perform such other duties as may be necessary to carry into effect the provisions of this Act or as may be prescribed by regulations under this Act.

Cf. 1927, No. 38, s. 4

5. Registration of fertilisers—(1) Subject to the provisions of this Act, the proprietor of any fertiliser shall not sell the fertiliser unless it is registered in accordance with the provisions of this Act.

(2) Every application for registration of a fertiliser shall be made to the Director-General on a form provided for the purpose and shall contain the following particulars:

- (a) The name and address of the proprietor:
- (b) The name of the fertiliser:
- (c) A facsimile of the brand of the fertiliser:
- (d) The percentage of each of the following fertilising elements present in the fertiliser—
 - (i) Nitrogen soluble in water;
 - (ii) Total nitrogen, expressed in the nearest whole number;
 - (iii) Phosphorus soluble in such medium as may be prescribed in that behalf by regulations under this Act;
 - (iv) Total phosphorus, expressed in the nearest whole number;
 - (v) Potassium soluble in water, expressed in the nearest whole number; and
 - (vi) At the option of the proprietor, phosphorus soluble in water:
- (e) The common names of the components of the fertiliser and the proportions in which they are contained therein, expressed in pounds and ounces per ton where the proportion is less than one hundredweight per ton, and expressed as percentages where the proportion is more than one hundredweight per ton:
- (f) Where a standard of fineness of grinding is prescribed by regulations under this Act in respect of any fertiliser or component thereof, the fineness of grinding of the fertiliser or component:

(g) Where any fertiliser or component thereof is phosphate rock or guano, the geographical source of the phosphate rock or guano.

(3) The name of every fertiliser shall contain an indication of the fertilising elements and, if so required by the Director-General, of any additive present in the fertiliser and every such indication shall be made by symbols or by words in such form as the Director-General may require.

(4) No proprietor shall sell any fertiliser until he has received from the Director-General a certificate of registration in respect of the fertiliser.

(5) There shall be payable in respect of the registration of every fertiliser such fees as may be prescribed by regulations under this Act.

6. Period of registration—(1) Subject to the provisions of this Act, the registration period of any fertiliser shall be five years.

(2) The first registration period after the commencement of this Act shall commence on the first day of July, nineteen hundred and sixty-one, and end with the thirtieth day of June, nineteen hundred and sixty-six, and subsequent registration periods shall end with the thirtieth day of June in every fifth year thereafter.

(3) Every certificate of registration of a fertiliser shall, unless sooner revoked, expire with the last day of the registration period in respect of which it was granted.

(4) Nothing in subsection (1) of section 5 of this Act shall apply, during the period from the date of the commencement of this Act to the first day of July, nineteen hundred and sixty-one, to any fertiliser in respect of which an application for registration has been made under this Act.

7. Re-registration—(1) The proprietor of any registered fertiliser may apply for re-registration of the fertiliser at any time not later than twenty-eight days before the end of the period of registration in respect of which the fertiliser is registered.

(2) Each application for re-registration shall be made in the manner provided by section 5 of this Act and all the provisions of this Act shall apply to any application under this section in all respects as if the application were an original application for registration.

8. Refusal of registration—The Director-General may refuse to register any fertiliser—

- (a) If the brand of the fertiliser is the same as the brand of any fertiliser already registered by another proprietor, or if he is of the opinion that the brand of the fertiliser is so similar to the brand of any fertiliser previously registered as to be likely to mislead; or
- (b) If he is of the opinion that the substance proposed to be registered is not a fertiliser within the meaning of this Act; or
- (c) If the brand or name of the fertiliser includes the word “special”; or
- (d) If he is of the opinion that any additive present in the fertiliser is unnecessary, or is present in excessive or inadequate quantity, or that its presence in the fertiliser is harmful in any respect; or
- (e) If, in the case of a fertiliser mixed with an agricultural chemical, the Agricultural Chemicals Board recommends that the fertiliser be not registered; or
- (f) If, for any other reason which appears to him to be sufficient, the Director-General considers that the fertiliser ought not to be registered.

Cf. 1927, No. 38, s. 6 (3)

9. Revocation of registration—During the period of registration of any fertiliser the Director-General may, by notice in writing addressed to the proprietor, revoke the registration of the fertiliser if he is satisfied that—

- (a) The fertiliser is not a fertiliser within the meaning of this Act; or
- (b) Any additive present in the fertiliser is unnecessary, or is present in excessive or inadequate quantity, or that its presence in the fertiliser is harmful in any respect; or
- (c) In the case of a fertiliser mixed with an agricultural chemical, the Agricultural Chemicals Board has recommended the revocation of the registration of the fertiliser; or
- (d) For any other reason which appears to him to be sufficient, the fertiliser ought not to be registered.

10. Appeals—(1) There shall be a right of appeal within twenty-eight days after the date of the decision appealed against from the whole or any part of any decision of the Director-General refusing registration of any fertiliser, or revoking the registration of any fertiliser, on the grounds that, having regard to the provisions of this Act, the decision of the Director-General was not reasonably arrived at.

(2) Every such appeal shall be made in the prescribed manner to an Appeal Authority consisting of a Magistrate and two assessors, of whom one shall be appointed by the Director-General and one by the appellant.

(3) On any appeal under this section the Appeal Authority shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act shall apply accordingly.

(4) On the hearing of the appeal the Appeal Authority, whose decision shall be final, may—

(a) Confirm the decision of the Director-General; or

(b) Reverse the decision of the Director-General, subject to such modifications and conditions as the Appeal Authority thinks fit.

(5) The Director-General shall take such action as may be necessary to give effect to any decision of the Appeal Authority under this section.

(6) There shall be paid to each assessor appointed under this section fees and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the assessors were members of a statutory Board within the meaning of the Act.

11. Agricultural chemicals—(1) Notwithstanding the provisions of the Agricultural Chemicals Act 1959, any fertiliser which is mixed with an agricultural chemical and which is registered as a fertiliser under this Act shall be exempt from registration under the Agricultural Chemicals Act 1959.

(2) Nothing in this section shall be construed to limit or restrict the power contained in the Agricultural Chemicals Act 1959 to make regulations regulating, prohibiting, or restricting the method and time of application of any agricultural chemical, or its preparation, or its concentration in any area or on any particular crop.

12. Prohibition of use of term “fertiliser” in certain circumstances—No person shall sell any substance for application to land or plants under any title or description containing the word “fertiliser” unless the substance is a fertiliser within the meaning of this Act.

Cf. 1927, No. 38, s. 23

13. Marking of packages—Subject to the provisions of this Act, every package of fertiliser sold by a vendor to any person other than another vendor shall show in bold and legible characters the registered name and brand of the fertiliser:

Provided that it shall be sufficient compliance with this section if the registered name and brand of the fertiliser are shown clearly on a tag of such material, and attached to the package in such manner, as may be approved by the Director-General.

Cf. 1927, No. 38, s. 7 (1)

14. Special mixtures—(1) This section applies to every fertiliser mixed in accordance with the instructions of the person who intends to use the special mixture.

(2) No manufacturer shall sell any special mixture unless he has registered his name and address with the Director-General as a manufacturer of special mixtures.

(3) No manufacturer shall prepare a special mixture unless the instructions for preparation are in writing signed by the person intending to use the mixture or his authorised agent and the instructions contain particulars of the ingredients to be contained in the mixture and the proportions in which they are contained therein, expressed in pounds and ounces per ton where the proportion is less than one hundredweight per ton, and expressed as percentages where the proportion is more than one hundredweight per ton.

(4) No manufacturer shall sell any special mixture to any purchaser other than the person on whose instructions the mixture was prepared or the authorised agent of that person.

(5) No manufacturer shall mix with, or add to, any special mixture, any agricultural chemical which the Director-General declares, by notice in the *Gazette*, shall not be used as an ingredient of any special mixture.

(6) No manufacturer shall mix with, or add to, any special mixture, any agricultural chemical except in accordance with such directions as may be notified to him by the Director-General.

(7) Any manufacturer who sells a special mixture shall, for a period of six months after the date of the sale, retain in his possession the instructions authorising the preparation of the mixture and shall permit an Inspector to examine the instructions at any time during that period.

(8) The provisions of this Act relating to the registration of fertilisers shall not apply to special mixtures.

(9) No purchaser of a special mixture may sell it unless he registers it pursuant to section 5 of this Act, and, upon registration of the mixture, the person registering the mixture shall become the proprietor thereof and the fertiliser shall cease to be a special mixture:

Provided that any person who purchases a special mixture as the authorised agent of the intending user may sell the mixture to that user without registering the mixture.

(10) For the purposes of this section the term "authorised agent" includes a person who acts on behalf of an intending user of a special mixture in any transaction to which this section relates, notwithstanding that the relationship of buyer and seller may exist between the agent and the manufacturer or between the user and the agent in respect of that transaction.

15. Record to be kept of fertilisers sold otherwise than in marked packages—(1) Every vendor who sells any fertiliser, other than a special mixture, otherwise than in a package marked as required by section 13 of this Act, whether in bulk or otherwise, shall keep at his place of business a record of the following particulars relating to every consignment of fertiliser so sold:

- (a) The name of the purchaser;
- (b) The weight of the fertiliser in the consignment;
- (c) The registered brand and name of the fertiliser; and
- (d) The date and method of consignment or delivery.

(2) Any fertiliser sold otherwise than in marked packages as aforesaid shall be deemed to be sold under the brand and name recorded as required by subsection (1) of this section.

(3) Every such record shall, for a period of six months from the date of the delivery or consignment of the fertiliser, at all reasonable times be available for the inspection of an Inspector, who may make copies of any such record.

(4) Every person who makes any false entry in any such record commits an offence against this Act.

Cf. 1927, No. 38, s. 8

16. Brands and names of fertilisers on premises of vendor to be available for inspection—(1) Every vendor shall keep an adequate record of the registered brands and names of all fertilisers kept on his premises, so that the registered brand and name of any lot can be readily ascertained. Any such record shall, for a period of six months from the making of the entry, be available for inspection at any reasonable time by an Inspector, who may make copies of any entries therein.

(2) The fact that any fertiliser is in the possession or under the control of a vendor shall be prima facie evidence that the fertiliser is offered for sale.

Cf. 1927, No. 38, s. 9

17. Advice note on sale of fertilisers—On the delivery of any fertiliser, other than a special mixture, the vendor shall immediately deliver to the purchaser an advice note setting out the following particulars:

- (a) The full name and business address of the vendor:
- (b) The registered name and brand of the fertiliser:
- (c) The quantity of fertiliser comprised in the sale:
- (d) The date of dispatch of the fertiliser:
- (e) The particulars required to be contained in the application for registration deposited with the Director-General by the proprietor of the fertiliser pursuant to paragraphs (d) to (g) of subsection (2) of section 5 of this Act.

Cf. 1927, No. 38, s. 10 (1), (2)

18. Advice note on sale of special mixtures—(1) On the delivery of any special mixture the vendor shall immediately deliver to the purchaser an advice note stating that the mixture is a special mixture and setting out the following particulars:

- (a) The full name and business address of the vendor:
- (b) The quantity of special mixture comprised in the sale:
- (c) The date of dispatch of the special mixture:
- (d) The particulars which, if an application were made for registration of the special mixture, would be required to be supplied by the applicant pursuant to paragraphs (d) to (g) of subsection (2) of section 5 of this Act.

(2) When setting out the particulars referred to in paragraph (d) of subsection (1) of this section, the vendor may either show the particulars in respect of the complete mixture or in respect of each component of the mixture.

Cf. 1927, No. 38, s. 10 (1), (2)

REP. 196
No. s.
Substitutn.

19. Advice note on sale of fertilisers containing agricultural chemicals—On the delivery of any fertiliser containing any agricultural chemical, the advice note delivered to the purchaser under section 17 or section 18, as the case may be, of this Act, shall contain such particulars relating to the agricultural chemical as, by paragraphs (c) to (h) of subsection (1) of section 15 of the Agricultural Chemicals Act 1959, are required to be shown on the label accepted by the Agricultural Chemicals Board in respect of the agricultural chemical.

REP. 196
No. s.
Substitutn.

20. Advice note on delivery of fertiliser—(1) Notwithstanding the provisions of sections 17, 18, and 19 of this Act, where a fertiliser is delivered on the instructions of the purchaser to some person other than the purchaser, the vendor shall immediately deliver the appropriate advice note to the person to whom the fertiliser is delivered.

(2) In any case to which subsection (1) of this section applies—

(a) The vendor shall, in addition to the advice note delivered under that subsection, deliver the appropriate advice note to the purchaser within fourteen days after the delivery of the fertiliser as aforesaid:

Provided that the advice note delivered to the purchaser under this paragraph shall not be required to contain the particulars referred to in paragraph (e) of the said section 17, or in paragraph (d) of subsection (1) of the said section 18, as the case may require:

(b) The vendor shall, at such intervals as may be prescribed by regulations under this Act, deliver to the purchaser a return showing prescribed details of fertilisers delivered on the instructions of the purchaser during the period to which the return relates:

(c) The purchaser shall not be required to deliver any advice note pursuant to the sale of the fertiliser by him to the person who has already taken delivery of the fertiliser as aforesaid.

AMD. 196
No. s.

REP. 196
No. s.
Substitutn.

21. Implied warranty on sale of fertiliser—(1) In every sale of any fertiliser there shall be implied a warranty by the seller to the purchaser that the particulars stated in the advice note or on the package are true in substance and in fact:

Provided that any such warranty shall not preclude the seller from relying on any relevant limits of error prescribed by regulations under this Act.

(2) In every sale of any fertiliser there shall be implied a warranty by the proprietor (whether or not he is otherwise a party to the sale) to the purchaser that at the time of the sale the ingredients of which the fertiliser is composed are evenly distributed throughout the product.

Cf. 1927, No. 38, s. 10 (3)

22. Sample of fertiliser to be sent to Inspector on request—

A proprietor shall, when required in writing to do so by an Inspector, forthwith send for inspection or analysis, without payment, a sample of any fertiliser manufactured or imported by him and which is registered or sought to be registered. The sample shall be of the weight specified by the Inspector, but not exceeding two pounds.

Cf. 1927, No. 38, s. 11

AMD. 19
No. 8

23. Inspector may take sample—(1) An Inspector may at all reasonable times enter upon any premises in which he has reason to believe that there is prepared for sale or consignment any fertiliser, or any substance which the Inspector has reasonable grounds to believe to be a fertiliser, and may without payment—

- (a) Take a sample of any such fertiliser or substance:
- (b) Require any person to produce any books or documents relating to the manufacture or sale of any such fertiliser or substance and allow copies of or extracts from any such books or documents to be made.

(2) In the exercise of the powers conferred on him by this Act an Inspector shall conform to such reasonable requirements of any person in authority as are necessary to prevent undue interference with traffic arrangements.

(3) The Inspector shall be allowed to inspect any consignment or other forwarding note, or any record or other document enabling him to identify the consignor of the fertiliser or substance, the consignee, the date of consignment, and the quantity of the fertiliser or substance, and to take a copy of any such note, record, or document.

(4) Every person who obstructs an Inspector in the exercise of his powers under this section commits an offence against this Act.

Cf. 1927, No. 38, s. 12

24. How sample to be taken—(1) Every sample taken by an Inspector under section 23 of this Act shall be taken in the manner prescribed by regulations under this Act in the presence of the vendor if he is available, or, if he is not available, then in the presence of some other witness. If the sample is taken on the premises of the vendor, the vendor shall supply the necessary labour if the Inspector so requires.

(2) Where any such sample taken by an Inspector on the premises of the vendor is a sample of fertiliser, the provisions of section 17 or section 18, as the case may be, of this Act shall apply as if the taking of the sample were a sale of fertiliser within the meaning of this Act by the vendor to the Inspector, and the relations existing between the Inspector and the vendor shall be deemed to be those of a buyer and seller respectively, and two copies of the advice note shall be handed to the Inspector.

Cf. 1927, No. 38, s. 13

25. Sample to be sent to Analyst—(1) The Inspector shall, in the presence of the vendor or his agent whenever practicable or of some other witness, divide each sample into three approximately equal parts and shall, in such manner as may be approved from time to time by the Director-General, seal each part separately in a container of a type approved for the purpose by the Director-General.

(2) The Inspector shall leave with or send to the vendor or his agent one such part, and shall send a second part and one copy of the advice note to the Analyst; the third part and the second copy of the advice note shall be retained by the Inspector.

(3) In addition to being sealed by the Inspector pursuant to subsection (1) of this section, the third part may also be sealed by the vendor or his agent, if present, in any such manner as he may desire.

Cf. 1927, No. 38, s. 14

26. Analysis of sample and certificate of analysis—(1) The sample received by the Analyst shall be divided into two approximately equal representative portions, one of which shall be fastened up and sealed in a suitable container for production, if required, in any proceedings that may thereafter be taken in the matter.

(2) The remaining portion shall be analysed in the prescribed manner and the Analyst shall set out the result in a certificate of analysis in the prescribed form and forward a copy of the certificate to the Inspector.

(3) Where the analysis discloses a discrepancy between the result of the analysis and the particulars shown in the application for registration or in the advice note, and the discrepancy exceeds any of the relevant prescribed limits of error, the Analyst shall forward without payment a copy of the certificate of analysis to the vendor. Where no such discrepancy is disclosed, the vendor may obtain a copy of the certificate of analysis on payment of the prescribed fee.

Cf. 1927, No. 38, s. 15

27. Analysis on request of buyer—(1) The purchaser of any fertiliser that is sold to him in packages may, at any time within twenty-one days after delivery of the fertiliser, notify any Inspector in writing that he desires a sample of the fertiliser to be taken.

(2) On payment to him of the prescribed fee the Inspector (or some person authorised by him in writing) shall, within seven days, attend at the place mentioned in the notice and take a sample of the fertiliser in the manner prescribed for taking samples, and shall deal with the sample in the manner directed in section 25 of this Act.

(3) Not less than four days' notice shall be given to the vendor by the Inspector or his duly authorised agent of the time and place at which he intends to take any such sample and the vendor or his agent shall be at liberty to attend at the time and place specified in the notice.

(4) Before taking any sample the Inspector or his duly authorised agent shall satisfy himself as far as practicable that the packages containing the fertiliser are in a sound condition, that they have been properly stored, and that they have not been opened or tampered with in any way.

(5) The sample shall be analysed and the Analyst shall give a certificate or certificates in the manner provided by section 26 of this Act.

(6) The Analyst shall forward to the purchaser and to the Inspector a copy of any certificate given under subsection (5) of this section.

(7) If any discrepancy between the result of the analysis and the particulars contained in the advice note does not exceed the relevant prescribed limits of error, the vendor shall be entitled to any reasonable expenses which he may have

incurred in attending at the place at which the sample is taken, and may recover any such expenses from the purchaser as a debt. Where a discrepancy exceeding the prescribed limits of error is disclosed, the Analyst shall forward without payment a copy of the certificate of analysis to the vendor. Where no such discrepancy is disclosed, the vendor may obtain a copy of the certificate of analysis on payment of the prescribed fee.

Cf. 1927, No. 38, s. 16

28. Evidence in proceedings—(1) In any proceedings under this Act the production of a certificate in the prescribed form of the results of an analysis purporting to be signed by an Analyst shall be sufficient evidence in the absence of proof to the contrary that the fertiliser or substance was submitted for analysis in accordance with this Act, of the identity of the fertiliser or substance analysed, of the result of the analysis, and of any other matters set out therein, without proof of the signature of the Analyst:

Provided that where the defendant desires to dispute the accuracy of any analysis, or to cross-examine the Analyst, he shall give to the Inspector not less than five clear days' notice in writing of his desire, and thereupon the Inspector shall give the Analyst notice that his attendance is necessary at the hearing of the proceedings.

(2) If on any such hearing it appears to the Court that the Analyst was called on frivolous or insufficient grounds, the defendant shall be liable to pay the costs of the attendance of the Analyst, irrespective of the result of the proceedings.

Cf. 1927, No. 38, ss. 17, 18

29. Independent analysis—The Court may order that the part of the sample retained by the Inspector under section 25 of this Act be divided into two parts in the presence of the vendor or his agent, and that each of such parts be submitted to an independent analyst for report.

Cf. 1927, No. 38, s. 19

30. Returns to be submitted by proprietors—(1) Every manufacturer of fertiliser shall, as and when required to do so by notice in writing given to him by the Director-General, furnish a return giving the following particulars, namely:

- (a) The quantities of material received, used, or otherwise disposed of, or held in stock by the manufacturer for the purpose of the manufacture of fertiliser:

(b) The quantities of fertiliser manufactured, held in stock, sold, delivered, or otherwise disposed of by the manufacturer.

(2) Every importer of fertiliser shall, as and when required to do so by notice in writing given to him by the Director-General, furnish a return giving such particulars as may be required by the notice with respect to the quantities of imported fertilisers received, sold, or otherwise disposed of, or held in stock by the importer.

Cf. 1927, No. 38, s. 23A; 1948, No. 3, s. 5

31. Publication of details of fertilisers—(1) The Director-General may from time to time publish, in such manner as he thinks fit:

(a) The results of any analysis made under this Act:

(b) Particulars of the ingredients of any fertiliser as shown in any application for registration of the fertiliser pursuant to paragraphs (d) to (g) of subsection (2) of section 5 of this Act:

(c) The results of any experiments carried out with any fertiliser sold in New Zealand:

(d) Statistical information obtained from the returns submitted under section 30 of this Act.

(2) No action shall lie against the Director-General or any other person in respect of the publication of any matter pursuant to this section.

Cf. 1927, No. 38, s. 26

32. Remedy by a vendor against prior vendor—Any vendor convicted of an offence against this Act for selling any fertiliser at variance with the particulars stated in the advice note or on the package may, in any action brought by him against any other person for misrepresentation or for breach of warranty on the sale to him of the fertiliser in the first place, recover, alone or in addition to any other damages recoverable by him, the amount of the penalty paid by him on any such conviction, together with the costs paid by him in respect of his defence if he proves—

(a) That the fertiliser to which the charge related was sold to him by the defendant whose advice note or package contained the like particulars to those contained in the advice note or on the package given by him upon the sale in respect of which he was convicted; and

- (b) That he purchased the fertiliser not knowing it to be otherwise than as stated in the advice note or on the package received by him, and sold it in the same state as that in which he received it:

Provided that it shall be open to the defendant in the action to prove that the conviction was wrongful.

Cf. 1927, No. 38, s. 27

33. Tampering with sample—Every person commits an offence against this Act who—

- (a) Knowingly and fraudulently tampers with any fertiliser or substance so as to procure that a sample of it taken in pursuance of this Act is not a fair sample of the fertiliser or substance; or
- (b) Improperly tampers with any part of a sample taken in pursuance of this Act.

Cf. 1927, No. 38, s. 21

34. False representation as to fertiliser—Every vendor commits an offence against this Act who—

- (a) Marks, or permits to be marked with a brand or name any package of fertiliser the particulars of which do not materially correspond with the particulars registered in respect of the fertiliser to which the brand or name relates:
- (b) Sells, otherwise than in packages, any fertiliser the registered particulars of which do not materially correspond with the particulars of the fertiliser sold:
- (c) Without first effectually effacing the brand or name, causes or permits any package marked with a brand or name to be filled with fertiliser the particulars of which are at variance with the particulars registered in respect of the fertiliser to which the brand or name relates:
- (d) On the sale of any fertiliser, gives an advice note the particulars set out in which are at variance with the true particulars of the fertiliser sold:
- (e) Sells any fertiliser which fails to conform to any standard of quality, purity, fineness, or composition prescribed in respect thereof, or of which any ingredient or component fails to comply with any such standard as aforesaid:

- (f) On the taking of any sample by an Inspector pursuant to section 24 of this Act, gives an advice note the particulars set out in which are at variance with the true particulars of the fertiliser or substance.

Cf. 1927, No. 38, s. 22 ; 1948, No. 3, s. 4

35. Offences and penalties—(1) Every person commits an offence against this Act who—

- (a) Without lawful excuse acts in contravention of, or fails to comply with, any provision of this Act or of any regulations thereunder:
- (b) Fails or refuses to furnish any return under this Act:
- (c) Knowingly makes any false or misleading statement in, or any material omission from, any such return.
- (2) Any person who commits an offence against this Act for which no penalty is otherwise provided shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Cf. 1927, No. 38, s. 24

36. Regulations—(1) The Governor-General may from time to time make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1) of this section it is hereby declared that regulations may be made under this section for all or any of the following purposes:

- (a) Prescribing the limits of error allowable in setting out in applications for registration and advice notes the percentage of fertilising elements in any fertiliser:
- (b) Prescribing types of mediums in which phosphorus may be shown to be soluble for the purposes of subparagraph (iii) of paragraph (d) of subsection (2) of section 5 of this Act:
- (c) Prescribing the fees payable under this Act:
- (d) Prescribing the powers and duties of Analysts and Inspectors:
- (e) Prescribing standards of fineness of grinding of any fertiliser or component thereof and prescribing limits of error allowable in respect of any such standards:
- (f) Prescribing methods of taking samples and of conducting analyses under this Act:

- (g) Prescribing the form of certificates of analysis to be used by Analysts in setting out the results of analyses:
 - (h) Prescribing standards of quality, purity, strength, weight, or quantity of any fertiliser or of any component thereof:
 - (i) Prescribing conditions relating to the use of packages in which fertiliser is contained.
- (3) All regulations made under this section shall be laid before Parliament.

Cf. 1927, No. 38, s. 28

37. Repeals and savings—(1) The enactments specified in the Schedule hereto are hereby repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

SCHEDULE

Section 37 (1)

ENACTMENTS REPEALED

1927, No. 38—The Fertilisers Act 1927. (1957 Reprint, Vol. 4, p. 895.)

1948, No. 3—The Fertilisers Amendment Act 1948. (1957 Reprint, Vol. 4, p. 911.)

1948, No. 77—The Statutes Amendment Act 1948: Section 17. (1957 Reprint, Vol. 4, p. 911.)
