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COMMITTEE REPORT

May 24, 2011

**H. 3772**

Introduced by Reps. Hardwick, Vick and Hixon

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Read the first time April 28, 2011.

**THE COMMITTEE ON**

**AGRICULTURE AND NATURAL RESOURCES**

To whom was referred a Bill (H. 3772) to amend Chapter 26, Title 46, Code of Laws of South Carolina, 1976, relating to the regulation of agricultural liming materials, so as to provide for regulation, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

DANIEL B. VERDIN III for Committee.

**A** **BILL**

TO AMEND CHAPTER 26, TITLE 46, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REGULATION OF AGRICULTURAL LIMING MATERIALS, SO AS TO PROVIDE FOR REGULATION OF LANDPLASTER, TO REVISE CERTAIN REPORTING REQUIREMENTS, AND TO REVISE THE PROVISIONS RELATING TO THE PAYMENT OF ASSESSMENTS LEVIED BY THE STATE CROP PEST COMMISSION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 26, Title 46 of the 1976 Code is amended to read:

“CHAPTER 26

Agricultural Liming Materials and Landplaster

Section 46‑26‑10. This chapter may be cited as the ‘South Carolina Agricultural Liming Materials and Landplaster Act’ and must be administered by the State Crop Pest Commission.

Section 46‑26‑20. For purposes of this chapter:

(1) ‘Agricultural liming materials’ means a product whose calcium and magnesium compounds are capable of neutralizing soil acidity.

(2) ‘Limestone’ means a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

(3) ‘Dolomitic limestone’ means those materials of which sixteen percent or more of the total neutralizing value expressed as calcium carbonate equivalent is derived from magnesium compounds.

(4) ‘Calcitic limestone’ means materials of which eighty‑five percent, plus or minus five percent, or more of the total neutralizing value expressed as calcium carbonate equivalent is derived from calcium compounds.

(5) ‘Burnt lime’ means a material whose calcium and magnesium compounds are capable of neutralizing soil acidity and which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

(6) ‘Hydrated lime’ means a material made from burnt lime which consists essentially of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide or magnesium hydroxide.

(7) ‘Marl’ means a granular or loosely consolidated earthy material composed largely of calcium carbonate.

(8) ‘Industrial by‑product used as a liming material’ means an industrial waste or by‑product containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

(9) ‘Calcium carbonate equivalent’ means the acid neutralizing capacity of an agricultural liming material expressed as weight percentage of calcium carbonate.

(10) ‘Fineness’ means the percentage of weight of the material which will pass United States Standard sieves of specified sizes.

(11) ‘Distributor’ means a person who imports, consigns, manufactures, produces, compounds, mixes, or blends agricultural liming materials or who offers for sale, sells, barters, or otherwise supplies agricultural liming materials.

(12) ‘Registrant’ means the person who applies for or requests registration of the agricultural liming material and is granted registration.

(13) ‘Brand’ means the term, designation, trademark, product name, or other specific designation under which individual agricultural liming material is offered for sale.

(14) ‘Ton’ means a net weight of two thousand pounds avoirdupois.

(15) ‘Percent’ or ‘percentage’ means by weight.

(16) ‘Bulk’ means in nonpackaged form.

(17) ‘Label’ means written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(18) ‘Person’ means individual, partnership, association, firm, or corporation.

(19) ‘Weight’ means the net weight of material as offered for sale.

(20) ‘Director’ means the Director of Regulatory and Public Service Programs, Clemson University.

(21) ‘Division’ means the Division of Regulatory and Public Service Programs, Clemson University, and its employees, agents, and officials.

(22) ‘Landplaster’ means a product consisting chiefly of calcium sulfate with two combined water molecules (CaSO4 2H20) and is incapable of neutralizing soil acidity. It shall contain not less than seventy percent CaSO4 2H20.

Section 46‑26‑30. The commission shall delegate the duties in this chapter to the director who may administer and enforce this chapter and related regulations.

Section 46‑26‑40. ~~(a)~~(A) Agricultural liming materials sold, offered or exposed for sale in this State shall have affixed to each package in a conspicuous manner on the outside ~~thereof~~, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

(1) ~~The~~ the net weight of the agricultural liming material;

(2) ~~The~~ the brand or trade name of the material;

(3) ~~The~~ the identification of the product as to type of the agricultural liming material as defined in Section 46‑26‑20~~, Items (c) through (h)~~;

(4) Calcium ~~carbonate~~ carbonate equivalent as determined by methods prescribed by the Association of Official Analytical Chemists. Minimum calcium carbonate equivalents as prescribed by regulations established by the commission;

(5) ~~The~~ the minimum percentage of calcium and magnesium expressed as elemental calcium (Ca) and elemental magnesium (Mg). Calcium and magnesium also may ~~also~~ be expressed as oxides or carbonates in addition to the elemental expression.

(6) ~~The~~ the minimum percent by weight passing through United States Standard sieves as prescribed by regulations established by the commission; and

(7) ~~The~~ the name and principal office address of the manufacturer or distributor.

(B) Landplaster sold, offered for sale or distributed in this State shall have affixed to each package’s exterior in a conspicuous manner, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a delivery slip, setting forth at least the following information:

(1) the name and address of the manufacturer or distributor guaranteeing the landplaster;

(2) the brand or trade name of the material;

(3) the net weight; and

(4) the guaranteed analysis showing the minimum percentages of calcium and sulfur.

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

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

Section 46‑26‑50. ~~Any~~ A person desiring to become a distributor as defined in this chapter ~~shall~~, before engaging in ~~such~~ this business, shall make application to the commission on application forms furnished by the commission for a permit to do business in South Carolina. Each application should be accompanied by a remittance of twenty dollars for each distributor as a fee for issue of permit. The applicant shall guarantee compliance with all provisions of this chapter which apply to the sale of bulk liming materials, or landplaster, or both, which shall include delivery to the consumer the bulk liming materials, or landplaster, or both, purchased. Upon approval by the commission, a copy of the permit ~~shall~~ must be furnished to the applicant and when furnished, shall authorize the person receiving it to do business as a distributor. All permits ~~shall~~ expire on June thirtieth of each year.

Section 46‑26‑60. ~~(a)~~(A) Each separately identified product ~~shall~~ must be registered before being distributed in this State. The application for registration ~~shall~~ must be submitted to the commission on forms furnished or approved by the commission or its duly authorized representative and ~~shall~~ must be accompanied by a fee of twenty dollars per product. Upon approval by the commission or its duly authorized representative, a copy of the registration ~~shall~~ must be furnished to the applicant. All registrations ~~shall~~ must expire on June thirtieth of each year.

~~(b)~~(B) A distributor ~~shall not be~~ is required to register any brand of agricultural liming material, or landplaster, or both, if it has been duly registered under this chapter by another person, providing the label does not differ in any respect.

Section 46‑26‑70. ~~(a) Within thirty days following the expiration of registration, which ends June thirtieth of each year, each registrant shall submit on a form furnished or approved by the Commission or its duly authorized representative an annual statement setting forth by counties, the number of net tons of each agricultural liming material sold by him for use in South Carolina during the previous twelve‑month period. Such statements shall be filed with the Fertilizer Inspection and Analysis Department of Clemson University.~~

~~(b) The registrant shall use a system of keeping books that is satisfactory to the commission, indicate accurately in his records the tonnage of agricultural liming material sold in South Carolina, and agree to allow the commission or its duly authorized representative to examine such records and verify the tonnage statement.~~

~~(c)~~(A) A report of tonnage is due quarterly for periods ending September thirtieth, December thirty‑first, March thirty‑first, and June thirtieth. The report is due within thirty days following the end of each quarter covering tonnage of bulk liming materials, or landplaster, or both, sold during the preceding quarter by the registrant transacting, distributing, or selling in South Carolina. If the tonnage report is not filed within thirty days after the date due, the registration of the bulk liming products, landplaster, or both, must be canceled automatically. If the report is false, fifteen days after due written notice and opportunity for hearing have been given, the commission may cancel the registration of the bulk liming material, or landplaster, or both, by the delinquent registrant.

(B) The commission shall publish and distribute annually, to each agricultural liming material and landplaster registrant and other interested persons, a composite report showing the tons of agricultural liming material and landplaster sold in each county of the State. This report shall ~~in no way~~ not divulge the operation of ~~any~~ a registrant.

Section 46‑26‑80. ~~(a)~~(A) It ~~shall be~~ is the duty of the commission who may act through its authorized agent to sample, inspect, make analyses of and test agricultural liming materials and landplaster distributed within the State as it may ~~deem~~ consider necessary to determine whether ~~such~~ the agricultural liming materials and landplaster are in compliance with the provisions of this chapter. Any officer or agent of the commission or of a committee ~~thereof~~ authorized by the commission may enter upon any public or private premises or carriers during regular business hours in order to have access to agricultural liming material and landplaster subject to the provisions of this chapter and regulations pertaining ~~thereto~~ to it, and to the records relating to their distribution.

~~(b)~~(B) The methods of analysis and sampling shall be those approved by the commission and shall be guided by the Association of Official Analytical Chemists procedures.

~~(c)~~(C) The results of official analysis of agricultural liming materials and landplaster and portions of official samples ~~shall~~ must be distributed by the commission as provided in the regulations at least annually.

Section 46‑26‑90. ~~(a)~~(A) The commission or its duly authorized representative may issue and enforce a written or printed stop sale, use or removal order to the owner or custodian of any lot of agricultural liming materials, or landplaster, or both, and to hold at a designated place when the commission finds ~~such~~ agricultural liming material, or landplaster, or both, is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and such agricultural liming material, or landplaster, or both, is released in writing by the commission, or ~~such~~ the violation has been otherwise legally disposed of by written authority.

~~(b)~~(B) The commission or its duly authorized representative shall release the agricultural liming material, or landplaster, or both, which has been subjected to an order under ~~item (a) above~~ subsection (A) when the requirements of this chapter have been complied with.

~~(c)~~(C) The provisions of this section ~~shall~~ must not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter.

Section 46‑26‑100. ~~(a)~~(A) ~~Any~~ A person or dealer violating the provisions of this chapter ~~shall be deemed~~ is guilty of a misdemeanor and, upon conviction, ~~shall~~ must be fined not more than one hundred dollars or be imprisoned for ~~a term~~ not ~~exceeding~~ more than thirty days.

~~(b)~~(B) In addition to the penalties provided in ~~item (a)~~ subsection (A), the commission may assess additional fines when ~~any~~ a shipment of agricultural liming materials, or landplaster, or both, fails to meet the guarantee for chemical, neutralizing value and screen size.

~~Such assessments~~ Assessments levied by the commission ~~shall~~ must be paid within thirty days from date of notice to manufacturer, dealer or agent ~~be paid to the purchasers of such penalized lots of agricultural liming material, receipts taken therefor and promptly forwarded to the commission~~. Failure to pay penalties after notice may result in revocation of the registrant’s products. All penalties must be paid by the registrant to the purchasers through the division by check or credit memorandum in case of indebtedness of the purchaser to the seller.

If the purchasers cannot be found, or if the amount due any one purchaser from the lot of agricultural liming material, or landplaster, or both, on which an assessment has been levied is less than one dollar, the amount of penalty assessed ~~shall~~ must be paid to the State Treasurer but remitted to the commission or its duly authorized representative, the proceeds to be credited to the account, the South Carolina Fertilizer Fund.

Section 46‑26‑110. The commission may seize any commercial liming material, or landplaster, or both, belonging to such manufacturer, dealer or agent if the assessment is not paid within three months after ~~such~~ a notice to ~~such~~ a manufacturer, dealer or agent has been given by the commission.

Section 46‑26‑120. If any agricultural liming material, or landplaster, or both, in the possession of the consumer is found by the commission to be short in weight, the registrant of ~~such~~ the agricultural liming material, or landplaster, or both, ~~shall,~~ within thirty days after official notice from the commission or its duly authorized representative, shall pay to the consumer a penalty equal to four times the value of the actual shortage. Underweight agricultural liming materials stored or offered for sale, other than in the possession of the consumer, ~~shall be deemed~~ is considered misbranded.

Section 46‑26‑130. ~~Every~~ A distributor or common carrier who ~~shall sell offer~~ sells, offers for sale, or ~~transport~~ transports in this State any agricultural liming materials, or landplaster, or both, without being properly branded or having attached ~~thereto such~~ to its labels and tags as required by law, or any distributor who ~~shall receive~~ receives any ~~such~~ agricultural liming material, or landplaster, or both, may be required to forfeit to the State a sum not to exceed the selling price of each separate package sold, offered for sale, or received, to be recovered by suit brought in the name of the State in any court of competent jurisdiction. ~~Such~~ These forfeitures, when collected ~~shall~~ must be paid to the State Treasurer who shall hold them subject to the order of the commission. ~~Provided, that~~ However, the penalty defined in this section shall apply also to any misbranded agricultural liming material, or landplaster, or both. ~~an~~ An agricultural liming material, or landplaster, or both, ~~being deemed~~ is considered to be misbranded if it carries ~~any~~ a false or misleading statement upon or attached to the package.

Section 46‑26‑140. Where it shall appear to the commission that any registrant has been persistently fraudulent in his dealings, the commission may revoke registration or refuse to register such registrant.

Section 46‑26‑150. ~~(a)~~(A) No agricultural liming material, landplaster, or both, shall be sold or offered for sale in South Carolina unless it complies with provisions of this chapter.

~~(b)~~(B) No agricultural liming material, or landplaster, or both, shall be sold or offered for sale in South Carolina which contains toxic materials in quantities injurious to plants or animals.

Section 46‑26‑160. The commission may establish ~~such~~ rules and regulations in regard to the inspection, analysis, distribution and sale of agricultural liming material, landplaster, or both, that are not ~~as shall not be~~ inconsistent with the provisions of this chapter and as in its judgment will best carry out ~~the~~ its requirements ~~thereof~~.

Section 46‑26‑170. Notwithstanding the provisions of this chapter, registrants shall be allowed not more than one year from such date to use existing inventories of labeled materials.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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