

MAR 3 1999

Agriculture

HOUSE FILE
BY DRAKE

488

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

A BILL FOR

1 An Act relating to civil penalties for violations regarding the
2 application of fertilizers and pesticides, establishing a
3 commercial fertilizer peer review panel, and providing an
4 effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 488

1 Section 1. Section 200.18, Code 1999, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. The secretary may establish, assess,
4 and collect civil penalties for violations of this chapter or
5 any rule or regulation adopted under this chapter. In
6 determining the amount of the civil penalty, which shall not
7 exceed one thousand five hundred dollars for each offense, the
8 department shall consider all of the following factors:

9 a. The willfulness of the violation.

10 b. The actual or potential danger of injury to the public
11 health or safety, or damage to the environment caused by the
12 violation.

13 c. The actual or potential cost of the injury or damage
14 caused by the violation to the public health or safety, or to
15 the environment.

16 d. The actual or potential cost incurred by the department
17 in enforcing this chapter and the rules adopted under this
18 chapter against the violator.

19 e. The remedial action required of the violator.

20 f. The violator's previous history of complying with
21 orders or decisions of the department.

22 Sec. 2. NEW SECTION. 200.23 COMMERCIAL FERTILIZER PEER
23 REVIEW PANEL.

24 1. The department shall establish a three-member
25 commercial fertilizer peer review panel to assist the
26 department in assessing or collecting a civil penalty pursuant
27 to section 200.18. The secretary shall appoint the following
28 members to the panel:

29 a. A person licensed in this state as a commercial
30 fertilizer dealer pursuant to section 200.4.

31 b. A person licensed in this state to apply fertilizer in
32 urban areas on lawns and gardens pursuant to section 200.4.

33 c. A person actively engaged in farming and required to
34 comply with secondary containment rules as identified in the
35 Iowa administrative code.

1 2. a. The members appointed to the panel pursuant to
2 subsection 1 shall serve four-year terms beginning and ending
3 as provided in section 69.19. However, the secretary shall
4 appoint initial members to serve for less than four years to
5 ensure that members serve staggered terms. A member is
6 eligible for reappointment. A vacancy on the panel shall be
7 filled for the unexpired portion of the regular term in the
8 same manner as regular appointments are made.

9 | b. The panel shall elect a chairperson from the panel
10 members to serve for a term of one year. The panel shall meet
11 on a regular basis and at the call of the chairperson. Two
12 voting members constitutes a quorum and the affirmative vote
13 of the majority of the members present is necessary for any
14 substantive action to be taken by the panel. The majority
15 shall not include any member who has a conflict of interest
16 and a statement by a member that the member has a conflict of
17 interest is conclusive for this purpose. A vacancy in the
18 membership does not impair the duties of the panel.

19 | c. Notwithstanding section 7E.6, the members shall only
20 receive reimbursement for actual expenses for performance of
21 their official duties, as provided by the department.

22 | d. The panel shall be staffed by the department.

23 | 3. The panel shall make recommendations to the department
24 regarding the establishment of civil penalties and procedures
25 to assess and collect penalties, as provided in section
26 200.18. The panel may propose a schedule of penalties for
27 minor and serious violations. The department may adopt rules
28 pursuant to chapter 17A based on the recommendations of the
29 panel as approved by the secretary.

30 | 4. The panel shall review cases of persons required to be
31 licensed pursuant to section 200.4 and persons required to
32 comply with secondary containment rules as identified in the
33 Iowa administrative code who are subject to civil penalties as
34 provided in section 200.18 according to rules adopted by the
35 department. A review shall be performed upon request by the

1 secretary or the person subject to the civil penalty. The
2 panel may establish procedures for the review and establish a
3 system of prioritizing cases for review, consistent with rules
4 adopted by the department pursuant to chapter 17A. The rules
5 may exclude review of minor violations. The review may also
6 include the manner of assessing and collecting the civil
7 penalty. The findings and recommendations of the panel shall
8 be included in a response delivered to the department and the
9 person subject to the penalty. The response may include a
10 recommendation that a proposed civil penalty be modified or
11 suspended, that an alternative method of collection be
12 instituted, or that conditions be placed upon the license.

13 5. The department shall adopt rules pursuant to chapter
14 17A establishing a period for the review and response by the
15 panel which must be completed prior to a contested case
16 hearing under chapter 17A. A hearing shall not be delayed
17 after the required period for review and response, except as
18 provided in chapter 17A.

19 6. This section does not apply to a license revocation
20 proceeding. This section does not require the department to
21 delay the prosecution of a case if immediate action is
22 necessary to reduce the risk of harm to the environment or
23 public health or safety. This section also does not require a
24 review or response if the department refers a violation of
25 this chapter for criminal prosecution, or for an action
26 involving a stop order issued pursuant to section 200.16. The
27 department shall consider any available response by the panel,
28 but is not required to change findings of an investigation, a
29 penalty sought to be assessed, or a manner of collection.

30 7. An available response by the panel may be used as
31 evidence in an administrative hearing, or a civil or criminal
32 case, except to the extent that information is considered
33 confidential pursuant to section 22.7.

34 Sec. 3. Section 206.19, subsection 5, Code 1999, is
35 amended to read as follows:

1 5. Establish, assess, and collect civil penalties for
2 violations by commercial applicators, public applicators,
3 private applicators, and pesticide dealers. In determining
4 the amount of the civil penalty, the department shall consider
5 all of the following factors:

6 a. The willfulness of the violation.

7 b. The actual or potential danger of injury to the public
8 health or safety, or damage to the environment caused by the
9 violation.

10 c. The actual or potential cost of the injury or damage
11 caused by the violation to the public health or safety, or to
12 the environment.

13 d. The actual or potential cost incurred by the department
14 in enforcing this chapter and rules adopted pursuant to this
15 chapter against the violator.

16 e. The remedial action required of the violator.

17 f. The violator's previous history of complying with
18 orders or decisions of the department.

19 The amount of the civil penalty shall not exceed one
20 thousand five hundred dollars for each offense.

21 Sec. 4. Section 206.23A, subsection 1, Code 1999, is
22 amended by adding the following new paragraphs:

23 NEW PARAGRAPH. f. A person certified as a private
24 applicator pursuant to section 206.5.

25 NEW PARAGRAPH. g. A person licensed as a pesticide dealer
26 pursuant to section 206.8.

27 Sec. 5. EFFECTIVE DATE. This Act, being deemed of
28 immediate importance, takes effect upon enactment.

29 EXPLANATION

30 This bill provides that the secretary of agriculture may
31 establish, assess, and collect civil penalties for violations
32 of Code chapter 200 relating to fertilizers and soil
33 conditioners. The bill provides that the amount of the civil
34 penalties shall not exceed \$1,500 for each offense. The bill
35 provides certain considerations for the secretary to consider

1 in determining the amount of a civil penalty for violations of
2 the provisions of the chapter.

3 The bill establishes a three-member commercial fertilizer
4 peer review panel similar to the commercial pesticide
5 applicator peer review panel provided for in Code section
6 206.23A. The bill provides that the panel shall make
7 recommendations to the department regarding the establishment
8 of civil penalties and procedures to assess and collect
9 penalties under Code chapter 200. The bill provides that the
10 panel shall review cases of certain persons who are subject to
11 civil penalties under the provisions of Code chapter 200. The
12 bill provides that the peer review panel does not apply to
13 license revocation proceedings and does not require the
14 department to delay the prosecution of a case if immediate
15 action is necessary. The bill provides that the peer review
16 panel does not require a review or response if the department
17 refers a violation for criminal prosecution. The bill
18 provides that an available response by the peer review panel
19 may be used as evidence in an administrative hearing or a
20 civil or criminal case, except to the extent that information
21 is considered confidential pursuant to Code section 22.7.

22 The bill provides that the department may establish,
23 assess, and collect civil penalties for violations of Code
24 chapter 206, relating to pesticides, by commercial
25 applicators, public applicators, private applicators, and
26 pesticide dealers. The bill provides that such penalties
27 shall not exceed \$1,500. Currently, such penalties shall not
28 exceed \$500. The bill provides that the commercial pesticide
29 applicator peer review panel shall be expanded from five
30 members to seven members and shall include a person certified
31 as a private applicator and a person licensed as a pesticide
32 dealer.

33 The bill takes effect upon enactment.

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