

6. A city shall not provide a civil penalty in excess of ~~one~~ five hundred dollars for the violation of an ordinance which is classified as a municipal infraction or if the infraction is a repeat offense, a civil penalty not to exceed ~~two~~ seven hundred fifty dollars for each repeat offense. A municipal infraction is not punishable by imprisonment.

Sec. 4. Section 364.22, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A municipal infraction is a civil offense punishable by a civil penalty of not more than ~~one~~ five hundred dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed ~~two~~ seven hundred fifty dollars for each repeat offense. However, notwithstanding section 364.3, a municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. § 403.8, by an industrial user may be punishable by a civil penalty of not more than one thousand dollars for each day a violation exists or continues.

Approved April 22, 1998

CHAPTER 1145

BULK DRY ANIMAL NUTRIENT PRODUCTS

H.F. 2542

AN ACT regulating bulk dry animal nutrient products, providing for fees and an appropriation, providing penalties, and providing for an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 200A.1 TITLE.

This chapter shall be known and may be cited by the short title of "Bulk Dry Animal Nutrient Products Law".

Sec. 2. NEW SECTION. 200A.2 PURPOSE.

The purpose of this chapter is to regulate certain bulk dry animal manure for use as a fertilizer or soil conditioner, which is unmanipulated and therefore not subject to regulation under chapter 200.

Sec. 3. NEW SECTION. 200A.3 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Advertise" means to present a commercial message in any medium including but not limited to print, radio, television, sign, display, label, tag, or articulation.
2. "Bulk dry animal nutrient product" or "bulk product" means an animal nutrient product delivered to a purchaser in bulk form to which a label cannot be attached.
3. "Department" means the department of agriculture and land stewardship.
4. "Distribute" means to offer for sale, sell, hold out for sale, exchange, barter, or supply or furnish a bulk dry animal nutrient product on a commercial basis.
5. "Distributor" means a person who distributes a bulk dry animal nutrient product.
6. "Dry animal nutrient product" means any unmanipulated animal manure composed primarily of animal excreta, if all of the following apply:
 - a. The manure contains one or more recognized plant nutrients which are used for their plant nutrient content.
 - b. The manure promotes plant growth.

- c. The manure does not flow perceptibly under pressure.
- d. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.
- e. The constituent molecules of the manure do not flow freely among themselves but do show the tendency to separate under stress.
- 7. "Guaranteed analysis" means the minimum percentage of plant nutrients claimed and reported to the department pursuant to section 200A.6.
- 8. "Official sample" means any sample of a bulk dry animal nutrient product taken by the department, according to procedures established by the department consistent with this chapter.
- 9. "Percent" or "percentage" means percentage by weight.
- 10. "Purchaser" means a person to whom a dry animal nutrient product is distributed.
- 11. "Ton" means a net weight of two thousand pounds avoirdupois.

Sec. 4. NEW SECTION. 200A.4 RULEMAKING.

The department shall adopt all rules necessary to administer this chapter, including but not limited to rules regulating licensure, labeling, registration, distribution, and storage of bulk dry animal nutrient products. A violation of this chapter includes a violation of any rule adopted pursuant to this section as provided in chapter 17A.

Sec. 5. NEW SECTION. 200A.5 LICENSE.

A person who distributes a bulk dry animal nutrient product in this state must first obtain a license from the department. A license application must be submitted to the department on a form furnished by the department according to procedures required by the department. A license shall expire on July 1 of each year.

Sec. 6. NEW SECTION. 200A.6 REGISTRATION.

1. A person shall not distribute a bulk dry animal nutrient product, unless the bulk product is registered with the department under this section. The department shall register each bulk product which complies with the requirements of this chapter. If the department determines that a registration application does not comply with the requirements of this chapter, the department shall notify the applicant of the department's determination and the reasons why the application failed to comply with the requirements of this chapter. The department shall provide the applicant with an opportunity to make the necessary corrections before resubmitting the application.

2. A registration application must be submitted to the department on a form furnished by the department according to procedures required by the department. A completed application shall include all of the following:

a. An accompanying label setting forth the guaranteed analysis of the bulk product, in the following form:

Total Nitrogen (N)	_____ percent
Available Phosphate (P) or P[2]O[5] or both	_____ percent
Soluble Potassium (K) or K[2]O or both	_____ percent

Registration and guarantee of water soluble phosphate (P) or (P[2]O[5]) shall be permitted.

b. A description of how the distributor plans to obtain the acres necessary for proper application of the bulk product which is not distributed.

c. Evidence of favorable effects and safety of the bulk product necessary to satisfy the department according to rules adopted by the department.

d. Additional data about a bulk product necessary to support claims made about the product, if required by the department.

3. A distributor shall not be required to register any bulk product which is already registered under this chapter by another person.

4. Upon request of the department, the advisory committee created in section 206.23 may advise and assist the department regarding the registration of bulk dry animal nutrient products under the provisions of this chapter.

Sec. 7. NEW SECTION. 200A.7 DISTRIBUTION STATEMENT REQUIRED.

1. The distribution of a bulk dry animal nutrient product must be accompanied by a written or printed distribution statement which may be prepared on a form furnished by the department. The distribution statement shall include all of the following information:

a. The bulk product's guaranteed analysis in the same form as required pursuant to section 200A.6.

b. The name and address of the bulk product's purchaser.

c. A notice to the bulk product's purchaser stating the number of acres needed to apply the purchased bulk product based on the average corn yields in the county where the bulk product is to be applied.

d. A warning that application of a bulk product should not exceed the nitrogen levels necessary to obtain optimum crop yields for the crop being grown based on crop nitrogen usage rate factors.

2. Before transferring possession of a bulk product, the distributor shall present the purchaser with an acknowledgment for the purchaser's signature or initials indicating that the purchaser has read the distribution statement and understands the number of acres required to apply the product according to the information in the distribution statement.

Sec. 8. NEW SECTION. 200A.8 DISTRIBUTION REPORTS.

1. A person required to be licensed pursuant to section 200A.5 shall file a distribution report with the department on forms furnished by the department reporting information regarding the person's distribution of bulk products.

2. The report shall be filed with the department not later than the last day of January and the last day of July excluding weekends and state-recognized holidays as provided in section 1C.2.

3. The report shall include all of the following:

a. The number of tons of bulk products distributed by the person in the state during the preceding six-month period. The report shall include the number of tons distributed to each county named in the report and the grade of the distributed bulk product.

b. The name and address of each purchaser and the number of tons purchased.

c. An inspection fee as provided in section 200A.9.

Sec. 9. NEW SECTION. 200A.9 FEES.

1. A person required to obtain a license as provided in section 200A.5 shall pay a ten-dollar fee for each place from which a bulk product is distributed in this state.

2. a. The first person who distributes a bulk product, who is required to be licensed pursuant to section 200A.5, shall pay an inspection fee twice each year. The inspection fee shall be paid at the time of filing each distribution report as required in section 200A.8. The amount of the fee shall be calculated based on the number of tons of bulk dry animal nutrient product distributed by the person as reported in the distribution report.

b. The rate for inspection fees shall be established by the department not more than once each year and shall be not more than twenty cents per ton.

c. An inspection fee shall not be imposed upon a purchaser, regardless of whether the purchaser subsequently distributes the product.

3. An inspection fee is delinquent after ten days following the date that a distribution report and fee are due as provided in section 200A.8. A delinquency penalty of not more than ten percent of the amount due shall be assessed against the person who is delinquent. However, the penalty shall be at least fifty dollars. The amount of fees and delinquency penalties due shall constitute a debt and become the basis of a judgment against the delinquent person.

Sec. 10. NEW SECTION. 200A.10 EXAMINATIONS.

1. The department shall maintain a laboratory with the equipment and employees necessary to conduct examinations of bulk dry animal nutrient products and to effectively administer and enforce this chapter.

2. The department, or a person authorized as an agent by the department, shall examine bulk products distributed in this state. An examination may include taking samples, conducting inspections and tests, and analyzing the bulk product.

3. The department shall conduct the examinations to the extent that the department determines necessary in order to conclude whether a bulk product is in compliance with the provisions of this chapter.

a. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, and the fourth amendment to the Constitution of the United States, for purposes of carrying out an examination.

b. The methods for examination shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

c. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of an official sample from a lot of a bulk dry animal nutrient product shall constitute prima facie evidence of the correctness of the analysis of that lot in courts of this state.

d. The department, in determining for administrative purposes whether a bulk product is deficient in guaranteed active ingredients, shall rely upon the official sample obtained and analyzed by the state chemist or the state chemist's deputy.

e. The results of an official analysis of a bulk product which has been found to be in violation of any provision of this chapter shall be forwarded by the department to the registrant. Upon request, the department shall furnish the registrant a portion of any official sample.

Sec. 11. NEW SECTION. 200A.11 PROHIBITED ACTS.

1. A person shall not distribute a bulk dry animal nutrient product containing any substance used as filler material, if any of the following applies:

a. The filler injures plant growth or is deleterious to soil.

b. The person distributing the bulk product misrepresents or deceives the person receiving the bulk product regarding the attributes of the filler material or its effect upon plant growth or soil condition.

2. A person shall not advertise a bulk product by making false or misleading statements regarding the bulk product.

3. A person shall not misbrand a bulk product by providing a distribution statement to a purchaser which fails to identify a substance promoting plant growth according to the bulk product's guaranteed analysis as provided in section 200A.6.

4. The burden of proof regarding a claim made by a person distributing a bulk product, including but not limited to the positive effects of the bulk product on plant growth, shall be the responsibility of the distributor.

5. A distributor shall not store a bulk product in a manner which pollutes the waters of the state.

Sec. 12. NEW SECTION. 200A.12 ENFORCEMENT.

In enforcing this chapter the department may do any of the following:

1. a. Take disciplinary action concerning a registration of a bulk dry animal nutrient product as provided in section 200A.6 or the license of a person distributing a bulk product as provided in section 200A.5. The department may do any of the following:

(1) Cancel the registration or deny an application for registration.

(2) Suspend or terminate the license or deny an application for a license.

b. The disciplinary action must be based upon evidence satisfactory to the department that the registrant, licensee, or applicant has used fraudulent or deceptive practices in violation of this chapter or has willfully disregarded the requirements of this chapter.

2. Issue and enforce a "stop sale, use, or removal" order against the owner or distributor of any lot of a bulk product.

a. The order may require that the bulk product be held at a designated place until released by the department.

b. The department shall release the bulk product pursuant to a release order upon satisfaction that legal issues compelling the issuance of the "stop sale, use, or removal order" have been resolved and all expenses incurred by the department in connection with the bulk product's removal have been paid to the department.

3. Seize and dispose of any lot of a bulk product which is not in compliance with the provisions of this chapter, upon petition to the district court in the county or adjoining county in which the bulk product is located.

a. If the court finds that the bulk product is in violation of this chapter, the court may order the condemnation of the bulk product. However, the court shall not order the seizure and disposition of a bulk product without first providing the owner of the bulk product with an opportunity to apply to the court for release of the bulk product, consent to reprocess the bulk product, or consent to amend a legal record to accurately describe the composition of the bulk product, including a distribution statement as provided in section 200A.7.

b. The department shall, as provided in the court order, dispose of the bulk product in a manner consistent with the quality of the bulk product and the laws of this state.

4. Apply to the district court in the county where a violation of this chapter occurs for a temporary or permanent injunction restraining a person from violating or continuing to violate this chapter, notwithstanding the existence of other remedies at law. The injunction shall be issued without a bond.

5. This section does not require the department to institute a proceeding for a minor violation if the department concludes that the public interest will be best served by a suitable written warning.

Sec. 13. NEW SECTION. 200A.13 VIOLATIONS.

1. A person violating a provision of this chapter is guilty of a simple misdemeanor.

2. a. If, after a departmental investigation, it appears that a person is in violation of this chapter, the department shall notify the person of the violation and provide the person with an opportunity to be heard under rules adopted by the department consistent with chapter 17A contested case proceedings.

b. If, after a hearing, the department determines that a violation has occurred, the department may report the violation to the appropriate county attorney for prosecution. The report shall include a certified copy of evidence presented during the hearing. This section does not require the department to report a minor violation for prosecution if the department concludes that the public interest will be best served by a suitable written warning.

c. A county attorney who receives a report of a violation from the department shall institute and prosecute the case in district court without delay.

Sec. 14. NEW SECTION. 200A.14 EXCHANGE BETWEEN PRODUCERS.

Nothing in this chapter shall be construed to restrict or prohibit any of the following:

1. The distribution of a bulk product to importers, manufacturers, or manipulators who mix bulk dry animal nutrient products for distribution.

2. The shipment of a bulk product to a person licensed as a distributor pursuant to section 200A.5 who has registered the bulk product as provided in section 200A.6.

Sec. 15. NEW SECTION. 200A.15 USE OF FEES.

Fees and delinquency penalties collected by the department pursuant to this chapter, including section 200A.9, shall be deposited in the general fund of the state. However, the

department may allocate moneys to the Iowa agricultural experiment station for research, work projects, and investigations as needed for the specific purpose of improving the regulatory functions to improve the enforcement of this chapter.

Approved April 22, 1998

CHAPTER 1146

DEBT COLLECTION

S.F. 2188

AN ACT relating to debt collection.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 537.7103, subsection 4, paragraph b, Code Supplement 1997, is amended to read as follows:

b. The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph does not apply to a either of the following:

(1) A formal pleading made in connection with a legal action.

(2) Communications issued directly by a state bank as defined in section 524.103, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association or savings bank, an out-of-state chartered savings and loan association or savings bank, a financial institution chartered by the federal home loan bank board, an association incorporated or authorized to do business under chapter 534, a state or federally chartered credit union, or a company or association organized or authorized to do business under chapter 515, 518, 518A, or 520, or an officer, employee, or agent of such company or association, provided the communication does not deceptively conceal its origin or its purpose.

Approved April 23, 1998

CHAPTER 1147

CIVIL LITIGATION BY INMATES AND PRISONERS

S.F. 2330

AN ACT relating to the filing of civil litigation by prisoners and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 610.1, Code 1997, is amended by adding the following new unnumbered paragraph: