

Fertilizers Act (R.S., 1985, c. F-10)

Act current to January 25th, 2011

Attention: See coming into force provision and notes, where applicable.

Fertilizers Act

F-10

An Act to regulate agricultural fertilizers

SHORT TITLE

Short title

1. This Act may be cited as the *Fertilizers Act*.

R.S., c. F-9, s. 1.

INTERPRETATION

Definitions

2. In this Act,

"analyst"

« *analyste* »

"analyst" means a person designated as an analyst pursuant to section 6;

"fertilizer"

« *engrais* »

"fertilizer" means any substance or mixture of substances, containing nitrogen, phosphorus, potassium or other plant food, manufactured, sold or represented for use as a plant nutrient;

"inspector"

« *inspecteur* »

"inspector" means a person designated as an inspector pursuant to section 6;

"label"

« *étiquette* »

"label" includes any legend, word, mark, symbol or design applied or attached to, included in, belonging to or accompanying any fertilizer, supplement or package;

"Minister"

« *ministre* »

"Minister" means the Minister of Agriculture and Agri-Food;

"package"
« *emballage* »

"package" includes a sack, bag, barrel, case or any other container in which fertilizers or supplements are placed or packed;

"penalty"
« *sanction* »

"penalty" means an administrative monetary penalty imposed under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* for a violation;

"prescribed"
« *Version anglaise seulement* »

"prescribed" means prescribed by regulation;

"sell"
« *vente* »

"sell" includes sell, offer for sale, expose for sale, have in possession for sale and distribute;

"supplement"
« *supplément* »

"supplement" means any substance or mixture of substances, other than a fertilizer, that is manufactured, sold or represented for use in the improvement of the physical condition of soils or to aid plant growth or crop yields;

"Tribunal"
« *Commission* »

"Tribunal" means the Review Tribunal continued by subsection 4.1(1) of the *Canada Agricultural Products Act*;

"violation"
« *violation* »

"violation" means any contravention of this Act or the regulations that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

R.S., 1985, c. F-10, s. 2; 1994, c. 38, s. 25; 1995, c. 40, s. 50; 1997, c. 6, s. 48.

PROHIBITIONS

Absence of registration, etc.

3. No person shall sell, or import into Canada, any fertilizer or supplement unless the fertilizer or supplement

- (a) has been registered as prescribed;
- (b) conforms to prescribed standards; and
- (c) is packaged and labelled as prescribed.

R.S., c. F-9, s. 3.

Destructive ingredients or harmful properties

4. No person shall sell any fertilizer or supplement that contains destructive ingredients or properties harmful to plant growth when used according to the directions that accompany the fertilizer or supplement or that appear on the label of the package in which the fertilizer or supplement is contained.

R.S., c. F-9, s. 9.

REGULATIONS

Regulations

5. (1) The Governor in Council may make regulations

- (a) prescribing the form in which applications for registration of fertilizers and supplements shall be made and the information to be furnished therewith;
- (b) respecting the registration of fertilizers and supplements and prescribing fees for registration;
- (c) respecting the duration and cancellation of the registration of fertilizers and supplements;
- (d) exempting any fertilizer or supplement or any person from the operation of all or any of the provisions of this Act;
- (e) prescribing the form, composition and other standards for fertilizers and supplements;
- (f) respecting the packaging of fertilizers and supplements and the labelling of packages thereof;
- (g) respecting the taking of samples and the making of analyses for the purposes of this Act;
- (h) providing that fertilizers registered under this Act and containing a pest control product as defined in subsection 2(1) of the *Pest Control Products Act* are, in prescribed circumstances and subject to prescribed conditions, deemed to be registered under that Act;
- (i) respecting the detention, preservation and safeguarding of anything seized under section 9;
- (j) respecting the disposition of anything forfeited under section 9;
- (k) prescribing anything else that by this Act is required to be prescribed; and
- (l) generally, for carrying out the purposes and provisions of this Act.

Regulations re North American Free Trade Agreement and WTO Agreement

(2) Without limiting the authority conferred by subsection (1), the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to fertilizers or supplements, Article 1711 of the North American Free Trade Agreement or paragraph 3 of Article 39 of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the WTO Agreement.

Definitions

(3) In subsection (2),

"North American Free Trade Agreement"

« *Accord de libre-échange nord-américain* »

"North American Free Trade Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *North American Free Trade Agreement Implementation Act*;

"WTO Agreement"
« *Accord sur l'OMC* »

"WTO Agreement" has the meaning given to the word "Agreement" by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

R.S., 1985, c. F-10, s. 5; 1993, c. 44, s. 155; 1994, c. 47, s. 115; 2002, c. 28, s. 84.

ENFORCEMENT

Designation of inspectors and analysts

6. (1) The President of the Canadian Food Inspection Agency may designate under section 13 of the *Canadian Food Inspection Agency Act* the inspectors and analysts necessary for the administration and enforcement of this Act.

Designation

(1.1) The President of the Canada Border Services Agency may designate inspectors under paragraph 9(2)(b) of the *Canada Border Services Agency Act* for the purposes of enforcing this Act.

Certificate to be produced

(2) Inspectors shall be given certificates in a form established by the President of the Canadian Food Inspection Agency or the President of the Canada Border Services Agency, as the case may be, attesting to their designation and, on entering any place under subsection 7(1), an inspector shall, if so required, produce the certificate to the person in charge of that place.

R.S., 1985, c. F-10, s. 6; 1997, c. 6, s. 49; 2005, c. 38, s. 113.

Powers of inspectors

7. (1) Subject to subsection (1.1), an inspector may at any reasonable time
(a) enter any place in which the inspector believes on reasonable grounds there is any article to which this Act applies;
(b) open any package found in that place that the inspector believes on reasonable grounds contains any such article; and
(c) examine the article and take samples thereof.

Warrant required to enter dwelling-house

(1.1) Where any place referred to in paragraph (1)(a) is a dwelling-house, an inspector may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant issued under subsection (1.2).

Authority to issue warrant

(1.2) Where on *ex parte* application a justice of the peace is satisfied by information on oath

- (a) that the conditions for entry described in paragraph (1)(a) exist in relation to a dwelling-house,
- (b) that entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and
- (c) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused,

the justice of the peace may issue a warrant under his hand authorizing the inspector named therein to enter that dwelling-house subject to such conditions as may be specified in the warrant.

Use of force

(1.3) In executing a warrant issued under subsection (1.2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Assistance to inspectors

(2) The owner or person in charge of any place described in subsection (1) and every person found in that place shall give an inspector all reasonable assistance to enable the inspector to carry out his duties and functions under this Act and shall furnish the inspector with any information he may reasonably require with respect to the administration of this Act and the regulations.

R.S., 1985, c. F-10, s. 7; R.S., 1985, c. 31 (1st Supp.), s. 9.

Obstruction of inspectors

8. (1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under this Act.

False statements

(2) No person shall make a false or misleading statement either orally or in writing to an inspector or other officer engaged in carrying out his duties or functions under this Act.

R.S., c. F-9, s. 8.

Seizure

9. (1) Where an inspector believes on reasonable grounds that this Act or the regulations have been contravened, the inspector may seize any article by means of or in relation to which the inspector believes on reasonable grounds the contravention was committed.

Detention

(2) Any article seized pursuant to subsection (1) shall not be detained after

(a) the provisions of this Act and the regulations have, in the opinion of the inspector, been complied with, or
(b) the expiration of six months after the day of the seizure, unless before that time proceedings have been instituted in respect of the contravention, in which event the article may be detained until the proceedings are finally concluded.

Forfeiture

(3) Where the Tribunal decides that a person has committed a violation, or a person is convicted of an offence under this Act, the Tribunal or the convicting court, as the case may be, may, in addition to any penalty or punishment imposed, order that any article by means of or in relation to which the violation or offence was committed, be forfeited to Her Majesty in right of Canada.

R.S., 1985, c. F-10, s. 9; 1995, c. 40, s. 51.

OFFENCES AND PUNISHMENT

Contravention of Act or regulations

10. Every person who, or whose employee or agent, contravenes any provision of this Act or any regulation made under paragraph 5(*i*) or (*j*) is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both; or

(b) an indictable offence and liable to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding two years, or to both.

R.S., 1985, c. F-10, s. 10; 1995, c. 40, s. 52.

Limitation period

10.1 (1) A prosecution for a summary conviction offence under this Act may be instituted at any time within two years after the time the subject-matter of the prosecution becomes known to the Minister.

Minister's certificate

(2) A document purporting to have been issued by the Minister, certifying the day on which the subject-matter of any prosecution became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is evidence of the matters asserted in it.

1997, c. 6, s. 50.

Offence by employee or agent

11. In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence.

R.S., c. F-9, s. 10.

Certificate of analyst

12. In any proceedings for a violation, or for an offence under this Act, a certificate of an analyst stating that the analyst has analyzed or examined a substance or a sample submitted to the analyst by an inspector and stating the result of the examination is evidence of the statement contained in the certificate.

R.S., 1985, c. F-10, s. 12; 1995, c. 40, s. 53.

Venue

13. A complaint or information in respect of an offence under this Act may be heard, tried or determined by a provincial court judge or a justice if the accused is resident or carrying on business within the territorial jurisdiction of the provincial court judge or justice, although the matter of the complaint or information did not arise in that territorial jurisdiction.

R.S., 1985, c. F-10, s. 13; R.S., 1985, c. 27 (1st Supp.), s. 203.

RELATED PROVISIONS

— **1997, c. 6, s. 50(2):**

Transitional

(2) For greater certainty, the two year limitation period provided for in subsection 10.1(1) of the Act, as amended by subsection (1), only applies in respect of offences committed after the coming into force of that subsection.

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