

CHAPTER 137.

FERTILIZERS AND FEEDING STUFFS.

AN ORDINANCE RESPECTING THE SALE OF AGRICULTURAL FERTILIZERS AND FEEDING STUFFS. Ordinance No. 1 of 1909.

[20th February, 1909.]

1. This Ordinance may be cited as the Fertilizers and Feeding Stuffs Ordinance. Short title.

2. In this Ordinance—

“Cattle” means bulls, cows, oxen, heifers, calves, sheep, goats, swine, horses, mules, and asses; Interpretation.

“Soluble” and “Insoluble” mean respectively soluble and insoluble in water, or, if so specified in the invoice, in a solution of citric acid or other solvent of the prescribed strength; and the percentage of soluble phosphates and percentage of insoluble phosphates mean respectively the percentage of tri-basic phosphate of lime which has been, and that which has not been, rendered soluble.

3. This Ordinance shall apply to wholesale as well as retail sales. Application of Ordinance.

4. Every person who sells for use as a fertilizer of the soil or food for cattle or poultry any article which has been subjected to any artificial process in the Colony, or which has been imported from abroad, shall take out an annual licence, which shall expire on the thirty-first day of December next after the granting thereof. Such licence shall be granted only to persons resident in the Colony by the Inspector-General free of charge, and may be cancelled by any Magistrate on second conviction for an offence against this Ordinance. Licence to sell fertilizers and foods.

Warranties as
to fertilizers
and feeding
stuffs.

5. (1) Every person who sells for use as a fertilizer of the soil any article which has been subjected to any artificial process in the Colony, or which has been imported from abroad, shall give to the purchaser an invoice stating the name of the article and what are the respective percentages (if any) of nitrogen, soluble phosphates, insoluble phosphates, and potash contained in the article; and the invoice shall have effect as a warranty by the seller that the actual percentages do not differ from those stated in the invoice beyond the prescribed limits of error.

(2) Every person who sells for use as a food for cattle or poultry any article which has been artificially prepared, shall give to the purchaser an invoice stating the name of the article, and whether it has been prepared from one substance or seed or from more than one substance or seed, and, in the case of any article artificially prepared otherwise than by being mixed, broken, ground, or chopped, what are the respective percentages (if any) of oil and albuminoids contained in the article; and the invoice shall have effect as a warranty by the seller as to the facts so stated, except that as respects percentages the invoice shall have effect as a warranty only that the actual percentages do not differ from those stated in the invoice beyond the prescribed limits of error.

(3) Where any article sold for use as food for cattle or poultry is sold under a name or description implying that it is prepared from any particular substance or from any two or more particular substances, or is the product of any particular seed or of any two or more particular seeds, and without indication that it is mixed or compounded with any other substance or seed, there shall be implied a warranty by the seller that it is pure, that is to say, is prepared from that substance or those substances only, or is a product of that seed or those seeds only.

(4) On the sale of any article for use as food for cattle or poultry, there shall be implied a warranty by the seller that the article is suitable to be used as such.

(5) Any statement by the seller of the percentages of the chemical and other ingredients contained in any article sold for use as a fertilizer of the soil, or of the nutritive and other ingredients contained in any article sold for use

as food for cattle or poultry, made in an invoice of such article, or in any circular or advertisement descriptive of such article, shall have effect as a warranty by the seller.

(6) Where an article sold for use as a fertilizer of the soil or as food for cattle or poultry consists of two or more ingredients which have been mixed at the request of the purchaser, it shall be a sufficient compliance with the provisions of this section with respect to percentages if the invoice contains a statement of percentages with respect to the several ingredients before mixture, and a statement that they have been mixed at the request of the purchaser.

6. (1) The Governor may appoint a Chief Agricultural Analyst (hereinafter called the "Chief Analyst"), an Agricultural Analyst or Analysts (hereinafter referred to as "the Analyst"), and an Official Sampler or Samplers, who shall be remunerated for their services in such manner as the Governor may, with the approval of the Legislative Council, allow.

Power to
appoint
Analysts.

(2) Provided that no person shall, while holding the office of Chief Analyst, Analyst, or Official Sampler under this Ordinance, engage or be interested in any trade, manufacture, or business connected with the sale, or importation for sale, of articles used for fertilizing the soil or as food for cattle or poultry.

7. (1) Every purchaser of any article used for fertilizing the soil or as food for cattle or poultry shall, on payment to the Analyst of such fee as may be fixed by the Governor, be entitled to have the article analysed and to receive from the Analyst with all convenient speed a certificate of the results of his analysis.

Purchaser
may have
analysis
made.

(2) An Official Sampler shall, at the request of the purchaser and on payment by him of the required fee, and may, without any such request, take a sample for analysis by the Analyst of any such article as aforesaid which has been sold or exposed or kept for sale, but, in the case of an article which has been sold, the sample shall be taken at or before the time of delivery or during the course of delivery to the purchaser, and in the presence of the seller or his agent, or, in the absence of the seller or his agent, in the presence of two witnesses.

(3) Where a sample has been taken with a view to the institution of any civil or criminal proceeding, the person taking the sample shall divide the sample into three parts, and shall cause each part to be marked, sealed, and fastened up, and shall deliver or send by post two parts to the Analyst and one part to the seller.

(4) An Analyst to whom a sample is submitted for analysis under this section—

- (a) if the sample has not been divided into parts and the parts marked, sealed, and fastened up as hereinbefore mentioned, shall send a copy of the certificate of his analysis to the person who submitted the sample for analysis; and
- (b) if the sample has been so divided into parts, shall analyse one of the parts of the sample delivered or sent to him and retain the other, and shall send a certificate of his analysis in the prescribed form and containing the prescribed particulars to the person who submitted the sample for analysis, and where that person is not the purchaser of the article also to the purchaser, and in every case to the seller and to such other persons (if any) as may be prescribed, and shall report to the Governor in the prescribed manner the result of any such analysis: Provided that if the Analyst does not know the name and address of the seller he shall send the certificate intended for the seller to the purchaser, to be by him forwarded to the seller.

(5) At the hearing of any civil or criminal proceeding with respect to any article a sample whereof has been analysed in pursuance of this section, the production of a certificate of the Analyst, or, if a sample has been submitted to the Chief Analyst, then of the Chief Analyst, shall be sufficient evidence of the facts therein stated unless the defendant or person charged requires that the Analyst or the person who made the analysis be called as a witness: Provided that this sub-section shall not apply—

- (a) where the sample has been taken otherwise than in the prescribed manner; or

(b) where the sample has not been divided into parts and the parts marked, sealed, and fastened up as hereinbefore mentioned.

(6) If in any such legal proceeding (other than a proceeding which cannot be instituted until an analysis has been made and a certificate given by the Chief Analyst) either party to the proceeding objects to the certificate of the Analyst, the party objecting shall, on payment of such fee as may be fixed by the Governor, be entitled to have submitted to the Chief Analyst the part of the sample retained by the Analyst, and to have that part analysed by the Chief Analyst and to receive from him a certificate of the result of his analysis.

(7) Where a sample is, under this section, sent for analysis to the Chief Analyst or to an Analyst, there shall be sent, with the sample, the invoice (if any) relating to the article from which the sample was taken, or a copy of the invoice or of any prescribed part thereof.

8. (1) The Governor may make regulations :—

Regulations.

- (a) With respect to any matter which under this Ordinance is to be prescribed;
- (b) As to the qualifications to be possessed by the Chief Analyst, the Analyst, and the Official Samplers;
- (c) As to the manner in which analyses are to be made;
- (d) As to the manner in which samples are to be taken and dealt with; and
- (e) Generally, for the purpose of carrying this Ordinance into execution :

Provided that nothing in this section, or in any regulations made thereunder, shall affect the right of the purchaser of an article used for fertilizing the soil, or as food for cattle or poultry, to have analysed by the Analyst a sample of any article taken by him or at his request otherwise than in accordance with the regulations.

(2) All regulations made under this section shall be laid before the Legislative Council as soon as may be after they are made, and published in the *Royal Gazette*.

Penalties for
breach of
duty by
seller.

9. (1) If any person who sells any article for use as a fertilizer of the soil or as food for cattle or poultry commits any of the following offences, namely:—

- (a) Fails without reasonable excuse to give, on or before, or within twenty-four hours after, the delivery of the article, the invoice required by the purchaser, Analyst, or Official Sampler for the purpose of this Ordinance;
- (b) Causes or permits any invoice or description of the article sold by him to be false in any material particular to the prejudice of the purchaser;
- (c) Sells for use as food for cattle or poultry any article which contains any ingredient deleterious to cattle or poultry or to which has been added any ingredient worthless for feeding purposes and not disclosed at the time of the sale,

he shall, without prejudice to any civil liability, be liable, on summary conviction before a Magistrate or Justice, for a first offence to a penalty not exceeding twenty pounds, and for any subsequent offence to a penalty not exceeding fifty pounds.

(2) In any proceeding under this section, it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale.

(3) A person alleged to have committed an offence under this section in respect of an article sold by him shall be entitled to the same rights and remedies, civil or criminal, against the person from whom he bought the article as are available to the person who bought the article from him; and any damages recovered by him may, if the circumstances justify it, include the amount of any forfeiture or penalty and costs paid by him on conviction under this section, and the costs of and incidental to his defence on such conviction.

Penalty for
tampering.

10. If any person fraudulently—

- (a) tampers with any article so as to procure that any sample of it taken in pursuance of this Ordinance does not correctly represent the article; or

- (b) tampers with any sample taken under this Ordinance; or
- (c) tampers with any invoice produced in pursuance of this Ordinance,

he shall be liable, on summary conviction before a Magistrate or Justice, to a penalty not exceeding twenty pounds, or to be imprisoned for any term not exceeding six months without the option of a fine.

11. If the owner, the purchaser, or the person entrusted for the time being with the charge or custody of any article sold or intended to be sold for use as a fertilizer of the soil or as food for cattle or poultry—

Penalty for obstructing Official Sampler.

- (a) refuses to allow an Official Sampler to take a sample of the article for the purpose of analysis; or
- (b) refuses to give the Official Sampler the invoice of the article or a copy thereof, or of any prescribed part thereof,

he shall be liable, on summary conviction before a Magistrate or Justice, to a penalty not exceeding ten pounds.

12. Every person who sells for use as a fertilizer of the soil or food for cattle or poultry any article which has been subjected to any artificial process in the Colony, or which has been imported from abroad, without having in force a licence under section 4 of this Ordinance, shall be liable, on summary conviction before a Magistrate or Justice, to a penalty not exceeding twenty pounds.

Penalty for selling without licence.

13. A prosecution for an offence against this Ordinance may be instituted either by the person aggrieved, or by any member of the Constabulary Force, or by any Warden, or by any body or association authorized in that behalf by the Governor, but in the case of an offence under section 9 a prosecution shall not be instituted by the persons aforesaid or by any such body or association except on a certificate of the Attorney-General that there is reasonable ground for such prosecution.

Prosecutions.