



# Senate

General Assembly

**File No. 340**

January Session, 2009

Substitute Senate Bill No. 891

*Senate, March 31, 2009*

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT MODERNIZING CONNECTICUT FERTILIZER LAW.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22-111a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2009*):

3 This chapter shall be known as the "Connecticut Fertilizer Law of  
4 2008".

5 Sec. 2. (NEW) (*Effective July 1, 2009*) Except as otherwise specified in  
6 sections 22-111a to 22-111j, inclusive, of the general statutes, 22-111l to  
7 22-111q, inclusive, of the general statutes and sections 2, 3, 9, 10, 13, 15  
8 and 22 of this act, the provisions of said sections shall be administered  
9 and enforced by the Commissioner of Agriculture or by such  
10 commissioner's duly authorized agent.

11 Sec. 3. (NEW) (*Effective July 1, 2009*) All special acts and municipal  
12 ordinances or regulations contrary to or inconsistent with the  
13 provisions of this act are superseded and shall be of no force or effect.

14 No political subdivision of the state shall enact or attempt to enforce  
15 any ordinance or regulation respecting the registration, packaging,  
16 labeling, sale, storage, distribution, use or application of a fertilizer, as  
17 defined in section 22-111b of the general statutes, as amended by this  
18 act.

19 Sec. 4. Section 22-111b of the general statutes is repealed and the  
20 following is substituted in lieu thereof (*Effective July 1, 2009*):

21 When used in this chapter:

22 [(a) "Commercial fertilizer" means any substance containing one or  
23 more recognized plant nutrients which is used for its plant nutrient  
24 content and which is designed for use or claimed to have value in  
25 promoting plant growth, except unmanipulated animal and vegetable  
26 manures, marl, lime, limestone, wood ashes and gypsum;

27 (b) "Specialty fertilizer" means a commercial fertilizer distributed  
28 primarily for nonfarm use, such as home gardens, lawns, shrubbery,  
29 flowers, golf courses, municipal parks, cemeteries, greenhouses and  
30 nurseries;

31 (c) "Bulk fertilizer" means a commercial fertilizer distributed in a  
32 nonpackaged form;

33 (d) "Brand" means a term, design or trademark used in connection  
34 with one or several grades of commercial fertilizer;

35 (e) (1) Until July 1, 1967, and thereafter until the Commissioner of  
36 Agriculture prescribes the alternative form in accordance with the  
37 provisions of subdivision (2) hereof, "guaranteed analysis" means the  
38 minimum percentage of plant nutrients claimed in the following order  
39 and form:

- T1 (A) Total Nitrogen (N) ..... per cent
- T2 Available Phosphoric Acid (P<sub>2</sub>O<sub>5</sub>) ..... per cent
- T3 Soluble Potash (K<sub>2</sub>O) ..... per cent;

40 (B) For unacidulated mineral phosphatic materials and basic slag,  
 41 both total and available phosphoric acid and the degree of fineness.  
 42 For bone, tankage and other organic phosphatic materials, total  
 43 phosphoric acid;

44 (C) Guarantees for plant nutrients other than nitrogen, phosphorus  
 45 and potassium may be permitted or required by regulation of the  
 46 commissioner. The guarantees for such other nutrients shall be  
 47 expressed in the form of the element. The sources of such other  
 48 nutrients, such as oxides, salt, chelates, etc., may be required to be  
 49 stated on the application for registration and may be included as a  
 50 parenthetical statement on the label. Other important beneficial or  
 51 harmful substances or compounds, determinable by laboratory  
 52 methods also may be guaranteed by provision of the director and  
 53 commissioner, acting jointly. When any plant nutrients or other  
 54 substances or compounds are guaranteed, they shall be subject to  
 55 inspection and analysis in accord with the methods and regulations  
 56 prescribed by the director.

57 (2) At any time after July 1, 1967, when the commissioner finds, after  
 58 public hearing following due notice, that the requirement for  
 59 expressing the guaranteed analysis of phosphorus and potassium in  
 60 elemental form would not impose an economic hardship on  
 61 distributors and users of fertilizer by reason of conflicting labeling  
 62 requirements among the states, he may require by regulation  
 63 thereafter that the guaranteed analysis shall be in the following form:

T4	Total Nitrogen (N) .....	per cent
T5	Available Phosphoric Acid (P) .....	per cent
T6	Soluble Potash (K) .....	per cent

64 provided the effective date of such regulation shall be not less than six  
 65 months following the issuance thereof, and provided, for a period of  
 66 two years following the effective date of such regulation, the  
 67 equivalent of phosphorus and potassium may also be shown in the  
 68 form of phosphoric acid and potash; provided, after the effective date

69 of a regulation issued under the provisions of this section, requiring  
70 that phosphorus and potassium be shown in the elemental form, the  
71 guaranteed analysis for nitrogen, phosphorus and potassium shall  
72 constitute the grade;

73 (f) "Grade" means the percentages of total nitrogen, available  
74 phosphorus or phosphoric acid, and soluble potassium or soluble  
75 potash stated in whole numbers in the same terms, order and  
76 percentages as in the guaranteed analysis;

77 (g) "Official sample" means any sample of commercial fertilizer  
78 taken by the commissioner or his agent and designated as official by  
79 the commissioner;

80 (h) "Ton" means a net weight of two thousand pounds avoirdupois;

81 (i) "Per cent" or "percentage" means the percentage by weight;

82 (j) "Person" includes individual, partnership, association, firm,  
83 limited liability company and corporation;

84 (k) "Distributor" means any person who imports, consigns,  
85 manufactures, produces, compounds, mixes or blends commercial  
86 fertilizer, or who offers for sale, barter or otherwise supplies  
87 commercial fertilizer in this state;

88 (l) "Registrant" means the person who registers commercial fertilizer  
89 under the provisions of this chapter;

90 (m) "Director" means the director of the Connecticut Agricultural  
91 Experiment Station;

92 (n) "Commissioner" means the Commissioner of Agriculture.]

93 (1) "Fertilizer" means any substance containing one or more  
94 recognized plant nutrients, which is used for its plant nutrient content  
95 and which is designed for use or claimed to have value in promoting  
96 plant growth. Fertilizer does not include unmanipulated animal and  
97 vegetable manures, marl, lime, limestone, wood, ash and other

98 products exempted by regulations adopted by the commissioner  
99 pursuant to section 22-111j, as amended by this act.

100 (2) "Fertilizer material" means a fertilizer which: (A) Contains  
101 important quantities of not more than one of the primary plant  
102 nutrients nitrogen, phosphate or potash, or (B) has not less than eighty-  
103 five per cent of its plant nutrient content present in the form of a single  
104 chemical compound, or (C) is derived from a plant or animal residue,  
105 by-product or natural material deposit which has been processed in a  
106 manner that results in its content of plant nutrients not having been  
107 materially changed, except by purification and concentration.

108 (3) "Mixed fertilizer" means a fertilizer containing any combination  
109 or mixture of fertilizer materials.

110 (4) "Specialty fertilizer" means a fertilizer distributed for nonfarm  
111 use.

112 (5) "Bulk fertilizer" means a fertilizer distributed in a nonpackaged  
113 form.

114 (6) "Brand" means a term, design or trademark used in connection  
115 with one or more grades of fertilizer.

116 (7) "Guaranteed analysis" means the minimum percentage of plant  
117 nutrients claimed in the following order and form:

- T7 (A) Total Nitrogen (N) ..... per cent
- T8 (B) Available Phosphate (P<sub>2</sub>O<sub>5</sub>) ..... per cent
- T9 (C) Soluble Potash (K<sub>2</sub>O) ..... per cent

118 (8) "Grade" means the percentage of total nitrogen, available  
119 phosphate and soluble potash, stated in whole numbers in the same  
120 terms, order and percentages as in the guaranteed analysis.

121 (9) "Official sample" means any sample of fertilizer taken by the  
122 commissioner or the commissioner's duly authorized agent and  
123 designated as such by the commissioner.

124 (10) "Ton" means a net weight of two thousand pounds avoirdupois.

125 (11) "Primary nutrient" means total nitrogen, available phosphate  
126 and soluble potash.

127 (12) "Per cent" or "percentage" means percentage by weight.

128 (13) "Person" means an individual, partnership, association, firm,  
129 corporation, limited liability company or other entity.

130 (14) "Distribute" means to import or consign or to offer for sale, sell,  
131 barter or otherwise supply fertilizer to any person in this state.

132 (15) "Distributor" means any person who distributes fertilizer.

133 (16) "Registrant" means a person who registers fertilizer pursuant to  
134 this act.

135 (17) "Label" means the display of all written, printed or graphic  
136 matter on a fertilizer container or a written statement accompanying a  
137 fertilizer.

138 (18) "Labeling" means all written, printed or graphic matter upon or  
139 accompanying any fertilizer, or advertisements, brochures, posters,  
140 television or radio announcements and Internet web site content used  
141 in promoting the sale of any fertilizer.

142 (19) "Investigational allowance" means an allowance for variations  
143 inherent in the taking, preparation and analysis of an official sample of  
144 fertilizer.

145 (20) "Deficiency" means the amount of nutrient found by analysis  
146 that is less than that guaranteed, which may result from a lack of  
147 nutrient ingredients or from lack of uniformity.

148 (21) "Blender" means any person or system engaged in the business  
149 of blending fertilizer through the use of mobile or fixed equipment.

150 (22) "Blending" means the physical mixing or combining of the

151 following to produce a uniform mixture: (A) One or more fertilizer  
152 materials and one or more filler materials, (B) two or more fertilizer  
153 materials, or (C) two or more fertilizer materials and filler materials,  
154 including mixing through the simultaneous or sequential application  
155 of any combination of materials listed in this subsection.

156 (23) "Application" means the process of placement or usage of  
157 fertilizer onto a targeted growing area.

158 (24) "Director" means the director of the Connecticut Agricultural  
159 Experiment Station.

160 (25) "Commissioner" means the Commissioner of Agriculture.

161 Sec. 5. Section 22-111c of the general statutes is repealed and the  
162 following is substituted in lieu thereof (*Effective July 1, 2009*):

163 (a) Each brand and grade of [commercial] fertilizer shall be  
164 registered in the name of the person whose name appears on the label  
165 for such fertilizer before being distributed in this state. The application  
166 for registration shall be submitted to the commissioner on a form  
167 furnished by the commissioner and shall be accompanied by a fee of  
168 [~~fifteen~~] seventy-five dollars. [per major and minor element for each  
169 brand and grade listed on the application form, provided the cost for  
170 each registration shall not exceed ninety dollars per individual  
171 product.] On and after January 1, [1993] 2010, said fee shall be  
172 established by the commissioner by regulations adopted in accordance  
173 with the provisions of [chapter 54] section 22-111j, as amended by this  
174 act. The application shall include the following information: (1) The net  
175 weight; (2) the brand and grade; (3) the guaranteed analysis; and (4)  
176 the name and address of the registrant. [; (5) the sources from which  
177 the nitrogen, phosphorus and potassium are derived. Upon approval  
178 of the application by the commissioner, a copy of the registration shall  
179 be furnished to the applicant.] All registrations shall expire on June  
180 thirtieth of each year.

181 (b) A distributor shall not be required to register any [brand of

182 commercial] fertilizer which is already registered under this chapter by  
183 another person, provided the label for such exempted fertilizer does  
184 not differ in any material respect to such previously registered  
185 fertilizer.

186 (c) A distributor shall not be required to register [a commercial]  
187 fertilizer formulated according to specifications which are furnished by  
188 a consumer prior to mixing; but shall be required to label such  
189 fertilizer as provided in subsection (c) of section 22-111d, as amended  
190 by this act.

191 Sec. 6. Section 22-111d of the general statutes is repealed and the  
192 following is substituted in lieu thereof (*Effective July 1, 2009*):

193 (a) Any [commercial] fertilizer distributed in this state in containers  
194 shall have placed on or affixed to the container a label setting forth in  
195 clearly legible and conspicuous form the following information:  
196 [required by subdivisions (1), (2), (3) and (4) of subsection (a) of section  
197 22-111c] (1) Net weight, (2) brand and grade, provided the grade shall  
198 not be required when no primary nutrients are claimed, (3) guaranteed  
199 analysis, (4) the name and address of the registrant, and (5) directions  
200 for use for fertilizer distributed to the end user.

201 (b) If the fertilizer is distributed in bulk shipments, a written or  
202 printed statement of the information required by [said subdivisions]  
203 subsection (a) of this section shall accompany delivery and be supplied  
204 to the purchaser at the time of delivery.

205 (c) A [commercial] fertilizer formulated according to specifications  
206 which are furnished by or for a consumer prior to mixing shall be  
207 labeled to show the net weight, guaranteed analysis and the name and  
208 address of the applicable distributor or registrant.

209 Sec. 7. Section 22-111e of the general statutes is repealed and the  
210 following is substituted in lieu thereof (*Effective July 1, 2009*):

211 (a) [The commissioner shall adopt regulations in accordance with  
212 the provisions of chapter 54 establishing] Each distributor shall pay to

213 the commissioner an inspection fee for all [commercial] fertilizer  
214 distributed to nonregistrants in this state [, provided the minimum fee  
215 shall be not less than] of twenty-five cents per ton, [and provided  
216 further, sales] with a minimum inspection fee of ten dollars. Sales to  
217 manufacturers or exchanges between them and sales by distributors  
218 [of less than ten tons in any annual period provided for in subsection  
219 (b) of this section] are exempted. Fees so collected shall be used for the  
220 payment of the costs of inspection, sampling and analysis and other  
221 expenses necessary for the administration of this chapter.

222 (b) Every person who distributes [a commercial] fertilizer in this  
223 state shall: File with the commissioner, on forms furnished by the  
224 commissioner, an annual statement for the period ending June thirtieth  
225 setting forth the number of net tons of each [commercial] fertilizer  
226 distributed in this state during such [annual] period. Such report shall  
227 be due on or before the [fifteenth] thirtieth day of the month following  
228 the close of each annual period and shall be accompanied by the  
229 inspection fee established pursuant to subsection (a) of this section. If  
230 the tonnage report is not filed, and the payment of the inspection fee is  
231 not made [,] within sixty days after the end of the annual period, a  
232 collection fee amounting to ten per cent of the amount [, but not less  
233 than ten dollars,] shall be assessed against the registrant and may be  
234 collected in a legal action against the registrant.

235 (c) When more than one person is involved in the distribution of a  
236 [commercial] fertilizer, the last person who has the fertilizer registered  
237 and who distributes to a nonregistered dealer or consumer shall be  
238 responsible for reporting the tonnage and paying the inspection fee,  
239 unless the report and payment have been previously made by a prior  
240 distributor of the fertilizer.

241 Sec. 8. Section 22-111f of the general statutes is repealed and the  
242 following is substituted in lieu thereof (*Effective July 1, 2009*):

243 (a) For the purpose of the enforcement of the provisions of this  
244 chapter or any regulation adopted by the commissioner pursuant to  
245 section 22-111j, as amended by this act, the commissioner or [his] the

246 commissioner's authorized agent, upon presenting appropriate  
247 credentials, [is authorized (1) to enter, during normal business hours,]  
248 may: (1) Enter any factory, warehouse or establishment within the  
249 state in which [commercial] fertilizers are manufactured, processed,  
250 packed or held for distribution, [or to] (2) enter any vehicle being used  
251 to transport or hold such fertilizers, and [(2) to inspect at reasonable  
252 times and within reasonable limits and in a reasonable manner,] (3)  
253 inspect such factory, warehouse, establishment or vehicle and all  
254 pertinent equipment, finished and unfinished materials, containers  
255 and labeling therein.

256 (b) The commissioner, [who may act through his] or the  
257 commissioner's authorized agent, shall sample and inspect  
258 [commercial] fertilizers distributed within this state at such times and  
259 places and to such extent as [he] the commissioner may deem  
260 necessary to determine whether such [commercial] fertilizers are in  
261 compliance with the provisions of this chapter or any regulation  
262 adopted by the commissioner pursuant to section 22-111j, as amended  
263 by this act. The commissioner, individually or through [his] the  
264 commissioner's duly authorized agent, is authorized to enter upon any  
265 public or private premises or carriers [during regular business hours]  
266 in order to have access to [commercial] fertilizers subject to the  
267 provisions of this chapter and [the rules and regulations pertaining  
268 thereto] any regulations adopted by the commissioner pursuant to  
269 section 22-111j, as amended by this act. The director or [his] the  
270 director's agent shall analyze samples designated official by the  
271 commissioner.

272 (c) The methods of analysis and sampling shall be those adopted by  
273 the [director and commissioner from recognized authorities such as  
274 the Journal of the] Association of Official Analytical Chemists  
275 International.

276 (d) The commissioner, in determining for administrative purposes  
277 whether any [commercial] fertilizer is deficient in plant food, shall be  
278 guided solely by the official sample obtained and analyzed as

279 provided for in this section.

280 (e) The results of official analysis shall be forwarded by the director  
281 to the commissioner, registrant and distributor. Upon request, the  
282 director shall furnish to the registrant a portion of any sample found  
283 subject to penalty or other legal action. Official samples for which  
284 penalties are assessed for nutritional deficiencies shall be retained by  
285 the director for not less than ninety days following the issuance of a  
286 deficiency report.

287 [(f) If the analysis provided for in this section shows that any  
288 commercial fertilizer falls short of the guaranteed analysis in any one  
289 or more ingredients, a penalty shall be assessed in accordance with the  
290 following provisions: (1) For less than the minimum of total nitrogen,  
291 available phosphoric acid, soluble potash, three times the value of the  
292 deficiency of any one or more of said ingredients should such  
293 deficiency exceed the official investigational allowances as provided in  
294 regulations adopted by the commissioner and (2) for less than the  
295 minimum in any other constituent covered under subdivision (1) of  
296 subsection (e) of section 22-111b, which the registrant is required to or  
297 may guarantee, three times the value of the deficiency of such  
298 constituent should such deficiency exceed the official investigational  
299 allowance as provided in regulations adopted by the commissioner.

300 (g) All penalties assessed under this section shall be paid to the  
301 consumer of the lot of commercial fertilizer represented by the sample  
302 analyzed within three months after the date of notice from the  
303 commissioner to the registrant. Receipts shall be taken therefor and  
304 promptly forwarded to the commissioner. If such consumers cannot be  
305 found, the amount of the penalty shall be paid to the commissioner  
306 who shall remit the money to the State Treasurer for deposit in the  
307 General Fund. The provisions of this section shall apply only to  
308 purchases of one ton or more of fertilizer.

309 (h) For the purpose of determining the commercial value of any  
310 commercial fertilizer to be applied under the provisions of this section  
311 the commissioner shall determine and publish annually the values per

312 unit of nitrogen, available phosphoric acid and soluble potash in  
313 commercial fertilizers in this state. If guarantees are as provided in  
314 subdivision (2) of subsection (e) of section 22-111b, the value shall be  
315 per unit of nitrogen, phosphorus and potassium. The values so  
316 determined and published shall be used in determining and assessing  
317 penalties.]

318       Sec. 9. (NEW) (*Effective July 1, 2009*) (a) For unacidulated mineral  
319 phosphatic material and basic slag, bone, tankage and other organic  
320 phosphatic materials, the total phosphate and degree of fineness may  
321 be guaranteed. Guarantees for plant nutrients other than nitrogen,  
322 phosphorus and potassium shall comply with the provisions of this act  
323 and with regulations adopted by the commissioner pursuant to section  
324 22-111j of the general statutes, as amended by this act. Guarantees for  
325 other nutrients shall be expressed in the form of the primary element  
326 of such other nutrient. The commissioner may require the source of  
327 other nutrients, including, but not limited to, oxides, salts and chelates,  
328 to be stated on the product label and application for registration. Other  
329 beneficial substances or compounds, determinable by laboratory  
330 methods, may be guaranteed by permission of the commissioner and  
331 with the advice of the director. Any guaranteed plant nutrients or  
332 other substances or compounds shall be subject to inspection and  
333 analysis in accordance with regulations adopted by the commissioner  
334 pursuant to section 22-111j of the general statutes, as amended by this  
335 act. Specialty fertilizers may be guaranteed in fractional units of not  
336 greater than one per cent of total nitrogen, available phosphate, soluble  
337 potash, fertilizer materials, bone meal and manures and similar  
338 materials may be guaranteed in fractional units.

339       (b) If analysis shows a fertilizer is deficient in one or more of its  
340 guaranteed primary plant nutrients beyond the investigational  
341 allowances and compensations as established by this act or by any  
342 regulation adopted by the commissioner pursuant to section 22-111j of  
343 the general statutes, as amended by this act, a penalty payment of  
344 three times the value of such deficiency shall be assessed by the  
345 commissioner against the violator.

346 (c) All penalties assessed by the commissioner pursuant to this  
347 section shall be paid by the registrant to the consumer of the lot of  
348 fertilizer represented by the sample analyzed not later than three  
349 months after the date of notice from the commissioner to the registrant.  
350 If the commissioner is unable to locate or identify such consumer, such  
351 penalty payments shall be paid to the commissioner, who shall deposit  
352 the same into the General Fund. If the commissioner finds upon  
353 satisfactory evidence that a person has altered the content of fertilizer  
354 supplied to him or her by a registrant, or to have mixed or  
355 commingled fertilizer from two or more suppliers such that the result  
356 of either alteration changes the analysis of the fertilizer as originally  
357 guaranteed, the commissioner shall require such person to obtain a  
358 registration and such person shall be held liable for all applicable  
359 penalty payments and be subject to any other applicable provisions of  
360 this act or any regulation adopted by the commissioner pursuant to  
361 section 22-111j of the general statutes, as amended by this act,  
362 including, but not limited to, seizure, condemnation and a stop sale  
363 order by the commissioner.

364 (d) A deficiency in an official sample of mixed fertilizer resulting  
365 from nonuniformity shall not be distinguishable from a deficiency due  
366 to actual plant nutrient shortage and shall be subject to action by the  
367 commissioner pursuant to sections 22-111a to 22-111j, inclusive, of the  
368 general statutes, 22-111l to 22-111q, inclusive, of the general statutes  
369 and sections 2, 3, 9, 10, 13, 15 and 22 of this act.

370 (e) Nothing contained in this section shall prevent any person from  
371 commencing an action in Superior Court for damages or penalty  
372 payments relating to fertilizer or fertilizer material.

373 Sec. 10. (NEW) (*Effective July 1, 2009*) The commissioner shall  
374 determine and publish annually the values per unit of nitrogen,  
375 available phosphate and soluble potash in fertilizers in this state, for  
376 purposes of determining the commercial value to be applied pursuant  
377 to sections 22-111a to 22-111j, inclusive, of the general statutes, 22-111l  
378 to 22-111q, inclusive, of the general statutes and sections 2, 3, 9, 10, 13,

379 15 and 22 of this act. Such determined and published values shall be  
380 used by the commissioner in determining and assessing penalty  
381 payments pursuant to sections 22-111a to 22-111j, inclusive, of the  
382 general statutes, 22-111l to 22-111q, inclusive, of the general statutes  
383 and sections 2, 3, 9, 10, 13, 15 and 22 of this act.

384 Sec. 11. Section 22-111g of the general statutes is repealed and the  
385 following is substituted in lieu thereof (*Effective July 1, 2009*):

386 [A commercial fertilizer is misbranded if it carries a false or  
387 misleading statement on the container or on the label attached to the  
388 container, or if false or misleading statements concerning the fertilizer  
389 are disseminated in any manner or by any means. No person shall  
390 distribute a misbranded fertilizer.]

391 No person shall distribute misbranded fertilizer. A fertilizer shall be  
392 misbranded if: (1) The labeling for such fertilizer is false or misleading,  
393 (2) the fertilizer is distributed under the name of another fertilizer  
394 product, (3) the fertilizer is not labeled pursuant to section 22-111d, as  
395 amended by this act, and in accordance with regulations adopted by  
396 the commissioner pursuant to section 22-111j, as amended by this act,  
397 or (4) such fertilizer is represented as a fertilizer or is represented as  
398 containing a plant nutrient or fertilizer, unless such plant nutrient or  
399 fertilizer conforms to the definition of identity, if any, prescribed by  
400 regulations adopted by the commissioner pursuant to section 22-111j,  
401 as amended by this act.

402 Sec. 12. Section 22-111h of the general statutes is repealed and the  
403 following is substituted in lieu thereof (*Effective July 1, 2009*):

404 [(a) Each person registering commercial fertilizers under this  
405 chapter shall furnish the commissioner with a confidential written  
406 statement of the tonnage of each grade of commercial fertilizer sold by  
407 him in this state for the annual period ending June thirtieth. No  
408 information furnished under this section shall be disclosed in such a  
409 way as to divulge the operation of any person.

410 (b) When more than one person is involved in the distribution of a  
411 commercial fertilizer, the last person who has the fertilizer registered  
412 and who distributes to a nonregistered dealer or consumer shall be  
413 responsible for reporting the tonnage and paying the inspection fee,  
414 unless the reporting and paying of fees have been made by a prior  
415 distributor of the fertilizer.]

416 (a) Any person who distributes or sells fertilizer to a nonregistrant  
417 shall furnish the commissioner with a written report detailing: (1) The  
418 county of the consignee of such fertilizer, (2) the amount, in tons or  
419 fractions thereof, of each grade of such fertilizer, and (3) the form in  
420 which such fertilizer was distributed, including, but not limited to,  
421 bags, bulk or liquid. Such written report shall be submitted to the  
422 commissioner not later than the thirtieth day of July for distributions  
423 or sales made by such person during the preceding twelve months.

424 (b) The commissioner shall not disclose to a third party any  
425 individual identifying information concerning a person who has  
426 submitted a report pursuant to subsection (a) of this section.

427 Sec. 13. (NEW) (*Effective July 1, 2009*) No person shall distribute an  
428 adulterated fertilizer. A fertilizer shall be considered adulterated if the  
429 commissioner determines: (1) Such fertilizer contains any deleterious  
430 or harmful substance in sufficient amounts to render it injurious to  
431 beneficial plant life, animals, humans, aquatic life, soil or water when  
432 applied in accordance with directions for use on the label for such  
433 fertilizer, (2) the label for such fertilizer does not contain adequate  
434 warning statements or directions for use necessary to protect plant life,  
435 animals, humans, aquatic life, soil or water, (3) the composition of such  
436 fertilizer falls below or differs from that displayed on the label for such  
437 fertilizer, or (4) such fertilizer contains unwanted crop or weed seed.

438 Sec. 14. Section 22-111i of the general statutes is repealed and the  
439 following is substituted in lieu thereof (*Effective July 1, 2009*):

440 The director shall publish at least annually and in such forms as he  
441 or she may deem proper: [(a)] (1) Information concerning the

442 distribution of [commercial] fertilizers and [(b)] (2) results of analyses  
443 based on official samples of [commercial] fertilizers distributed within  
444 the state as compared with the analyses guaranteed under sections 22-  
445 111c, as amended by this act, and 22-111d, as amended by this act.

446 Sec. 15. (NEW) (*Effective July 1, 2009*) (a) Bulk fertilizers shall be  
447 stored in a manner that minimizes the release of such fertilizers and  
448 protects the environment.

449 (b) Fertilizer use and application shall comply with best  
450 management practices and with regulations adopted by the  
451 commissioner pursuant to section 22-111j of the general statutes, as  
452 amended by this act.

453 Sec. 16. Section 22-111j of the general statutes is repealed and the  
454 following is substituted in lieu thereof (*Effective July 1, 2009*):

455 [For the enforcement of this chapter, the commissioner is authorized  
456 to prescribe and, after public hearing following due public notice, to  
457 enforce such regulations relating to the distribution of commercial  
458 fertilizers as he may find] The commissioner shall adopt regulations  
459 regarding fertilizer, in accordance with the provisions of chapter 54, as  
460 the commissioner finds necessary to carry into effect the full intent and  
461 meaning of this chapter.

462 Sec. 17. Section 22-111l of the general statutes is repealed and the  
463 following is substituted in lieu thereof (*Effective July 1, 2009*):

464 The commissioner may cancel the registration of any brand of  
465 [commercial] fertilizer or refuse to register any brand of [commercial]  
466 fertilizer as herein provided, upon satisfactory evidence that the  
467 registrant or applicant for registration has used fraudulent or  
468 deceptive practices in the evasion or attempted evasion of the  
469 provisions of this chapter or any regulations [promulgated] adopted  
470 thereunder; provided no registration shall be revoked or refused until  
471 the registrant has been given the opportunity to appear for a hearing  
472 by the commissioner.

473 Sec. 18. Section 22-111m of the general statutes is repealed and the  
474 following is substituted in lieu thereof (*Effective July 1, 2009*):

475 The commissioner may issue and enforce a written or printed "stop  
476 sale, use or removal" order to the owner or custodian of any lot of  
477 [commercial] fertilizer to hold such fertilizer at a designated place  
478 when the commissioner finds such [commercial] fertilizer is being  
479 offered or exposed for sale in violation of any provision of this chapter  
480 or any regulation adopted by the commissioner pursuant to section 22-  
481 111j, as amended by this act, until the [law has] provisions of this act or  
482 any such regulation have been complied with and such [commercial]  
483 fertilizer is released in writing by the commissioner or such violation  
484 has been otherwise legally disposed. The commissioner shall release  
485 the [commercial] fertilizer so withdrawn when the requirements of the  
486 provisions of this chapter or any regulation adopted by the  
487 commissioner pursuant to section 22-111j, as amended by this act, have  
488 been complied with and all costs and expenses incurred in connection  
489 with the withdrawal have been paid.

490 Sec. 19. Section 22-111n of the general statutes is repealed and the  
491 following is substituted in lieu thereof (*Effective July 1, 2009*):

492 Any lot of [commercial] fertilizer not in compliance with the  
493 provisions of this chapter or any regulation adopted pursuant to  
494 section 22-111j, as amended by this act, shall be subject to seizure [on  
495 complaint of] by the commissioner. [to a court of competent  
496 jurisdiction in the area in which such commercial fertilizer is located.]  
497 If the [court] commissioner finds such [commercial] fertilizer to be in  
498 violation of this chapter or any regulation adopted pursuant to section  
499 22-111j, as amended by this act, and orders the condemnation of such  
500 [commercial] fertilizer, it shall be disposed of in any manner consistent  
501 with the quality of the [commercial] fertilizer and the laws of the state;  
502 provided in no instance shall the disposition of such [commercial]  
503 fertilizer be ordered by the [court] commissioner without first giving  
504 the claimant an opportunity to apply to the [court] commissioner for  
505 release of such [commercial] fertilizer or for permission to process or

506 relabel such [commercial] fertilizer to bring it into compliance with this  
507 chapter or any regulation adopted pursuant to section 22-111j, as  
508 amended by this act.

509 Sec. 20. Section 22-111o of the general statutes is repealed and the  
510 following is substituted in lieu thereof (*Effective July 1, 2009*):

511 (a) If it appears from the examination of any [commercial] fertilizer  
512 that any provision of this chapter or [the regulations issued  
513 thereunder] any regulation adopted pursuant to section 22-111j, as  
514 amended by this act, has been violated, the commissioner shall cause  
515 notice of the violation to be given to the registrant, distributor or  
516 possessor from whom the sample was taken. Any person so notified  
517 shall be given opportunity to be heard [under such regulations as may  
518 be prescribed] by the commissioner. If it appears after such hearing,  
519 either in the presence or absence of the person so notified, that any [of  
520 the provisions] provision of this chapter or [rules and regulations  
521 issued thereunder have] any regulation adopted pursuant to section  
522 22-111j, as amended by this act, has been violated, [the commissioner  
523 may certify the facts to the prosecuting officer having jurisdiction]  
524 such person shall be fined not more than five hundred dollars for each  
525 such violation.

526 [(b) Any person convicted of violating any provision of this chapter  
527 or any regulation issued thereunder shall be fined not more than five  
528 hundred dollars.]

529 [(c)] (b) Nothing in this chapter shall be construed as requiring the  
530 commissioner or [his] the commissioner's representative to [report for  
531 prosecution or for the institution of] cause notice of a violation to be  
532 given to a registrant, distributor or possessor or to institute seizure  
533 proceedings for minor violations of this chapter when [he] the  
534 commissioner believes that the public interests will be best served by a  
535 suitable notice of warning in writing.

536 [(d) Each prosecuting officer to whom any violation is reported shall  
537 cause appropriate proceedings to be instituted and prosecuted in a

538 court of competent jurisdiction without delay.]

539 [(e)] (c) The commissioner may apply for and any court of  
540 competent jurisdiction may grant a temporary or permanent injunction  
541 restraining any person from violating or continuing to violate any  
542 provision of this chapter or any regulation [promulgated thereunder]  
543 adopted pursuant to section 22-111j, as amended by this act,  
544 notwithstanding the existence of other remedies at law. Such  
545 injunction shall be issued without bond.

546 Sec. 21. Section 22-111p of the general statutes is repealed and the  
547 following is substituted in lieu thereof (*Effective July 1, 2009*):

548 Nothing in this chapter shall be construed to restrict or avoid sales  
549 or exchanges of [commercial] fertilizers between importers,  
550 manufacturers or manipulators who mix fertilizer materials for sale or  
551 to prevent the free and unrestricted shipments of [commercial]  
552 fertilizer to manufacturers or manipulators who have registered their  
553 brands as required by the provisions of this chapter or any regulation  
554 adopted pursuant to section 22-111j, as amended by this act.

555 Sec. 22. (NEW) (*Effective July 1, 2009*) The commissioner may  
556 cooperate with and enter into agreement with governmental agencies  
557 of this state, other states and agencies of the federal government in  
558 order to carry out the purpose and provisions of sections 22-111a to 22-  
559 111j, inclusive, of the general statutes, 22-111l to 22-111q, inclusive, of  
560 the general statutes and sections 2, 3, 9, 10, 13, 15 and 22 of this act, or  
561 any regulation adopted pursuant to section 22-111j of the general  
562 statutes, as amended by this act.

563 Sec. 23. Section 22-111q of the general statutes is repealed and the  
564 following is substituted in lieu thereof (*Effective July 1, 2009*):

565 Any person aggrieved by any action of the commissioner under the  
566 provisions of this chapter or any regulation adopted pursuant to  
567 section 22-111j, as amended by this act, may appeal therefrom in  
568 accordance with the provisions of section 4-183.

569 Sec. 24. Section 22-111k of the general statutes is repealed. (*Effective*  
570 *July 1, 2009*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	22-111a
Sec. 2	<i>July 1, 2009</i>	New section
Sec. 3	<i>July 1, 2009</i>	New section
Sec. 4	<i>July 1, 2009</i>	22-111b
Sec. 5	<i>July 1, 2009</i>	22-111c
Sec. 6	<i>July 1, 2009</i>	22-111d
Sec. 7	<i>July 1, 2009</i>	22-111e
Sec. 8	<i>July 1, 2009</i>	22-111f
Sec. 9	<i>July 1, 2009</i>	New section
Sec. 10	<i>July 1, 2009</i>	New section
Sec. 11	<i>July 1, 2009</i>	22-111g
Sec. 12	<i>July 1, 2009</i>	22-111h
Sec. 13	<i>July 1, 2009</i>	New section
Sec. 14	<i>July 1, 2009</i>	22-111i
Sec. 15	<i>July 1, 2009</i>	New section
Sec. 16	<i>July 1, 2009</i>	22-111j
Sec. 17	<i>July 1, 2009</i>	22-111l
Sec. 18	<i>July 1, 2009</i>	22-111m
Sec. 19	<i>July 1, 2009</i>	22-111n
Sec. 20	<i>July 1, 2009</i>	22-111o
Sec. 21	<i>July 1, 2009</i>	22-111p
Sec. 22	<i>July 1, 2009</i>	New section
Sec. 23	<i>July 1, 2009</i>	22-111q
Sec. 24	<i>July 1, 2009</i>	Repealer section

**Statement of Legislative Commissioners:**

In sections 2, 9(d), 10 and 22, references to "sections 1 to 23, inclusive" were changed throughout the bill to "sections 22-111a to 22-111j, inclusive, of the general statutes, 22-111l to 22-111q, inclusive, of the general statutes and sections 2, 3, 9, 10, 13, 15 and 22 of this act" for accuracy.

**ENV** Joint Favorable Subst.-LCO

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Department of Agriculture	GF - Revenue Gain	81,653	81,653

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill would result in a revenue gain to the General Fund of about \$81,653 in FY 10 and FY 11 based on the information in the table below:

Item:	Fee(\$)	Number of Items	Revenue FY 10 (\$)	Revenue FY 11 (\$)
Fee for fertilzizer registrants	75	350	26,250	26,250
Fee increase for fertilizer formulation (from \$56 per product to \$75 per product)	19	2,837	53,903	53,903
New minimum fee per ton	10	150	1,500	1,500
<b>Total</b>	--	--	<b>81,653</b>	<b>81,653</b>

Also, the bill could result in a minimal revenue gain to the General Fund since it allows the agency to impose a civil penalty up to \$500 for each violation of the bill’s provisions.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and subject to the number of civil penalties imposed.

**OLR Bill Analysis****sSB 891*****AN ACT MODERNIZING CONNECTICUT FERTILIZER LAW.*****SUMMARY:**

This bill updates the laws regulating fertilizer, replacing current law's provisions, which are based on a 1965 recommended model law from the Association of American Plant Food Control Officials (AAPFCO), with the most recent AAPFCO recommended version.

The bill supersedes any inconsistent or conflicting special acts municipal ordinances, or regulations. It prohibits municipalities from enacting or attempting to enforce any ordinance or regulation concerning registration, packaging, labeling, sale, storage, distribution, use, or application of a fertilizer. It explicitly extends the Department of Agriculture (DOAG) commissioner's enforcement powers to regulations he adopts and allows anyone aggrieved them to appeal to Superior Court.

It makes numerous minor, conforming, and technical changes.

EFFECTIVE DATE: July 1, 2009

**CONNECTICUT FERTILIZER LAW OF 2008**

The law regulates fertilizer from those selling it for distribution in the state (registrants) through distributors who buy it from them to ensure those who purchase it (nonregistrants) receive the product as advertised (i.e., with the correct ingredients).

The bill specifies that the DOAG commissioner or his duly authorized agent may administer and enforce fertilizer laws and regulations.

**DEFINITION OF FERTILIZER**

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The bill replaces the term “commercial fertilizer” with “fertilizer.” It basically maintains the same definition as a “regulated plant growing substance,” but potentially expands exemptions under it by allowing the commissioner to exempt products through regulation. It also specifies that wood and ash are not considered fertilizer, as opposed to wood ash and gypsum under current law.

### **REGISTRATION, FEES, AND REPORTING (§§ 5, 7, 12)**

The law requires each brand and grade of fertilizer to be registered annually before it can be distributed in the state. The bill specifies that (1) the registration must be in the name of the person whose name appears on the fertilizer label and (2) a distributor’s exemption from registering a fertilizer that is already registered is only valid if the exempted fertilizer does not materially differ from the one already registered. It eliminates the requirement that the application include the source from which the nitrogen, phosphorus, and potassium were derived.

#### ***Registration Fee***

The bill sets the registration application fee at \$75 beginning July 1, 2009 and requires the commissioner to set the fee by regulation beginning January 1, 2010. Under current law, the fee is \$15 per major and minor element for each brand and grade listed on the application, up to \$90 per individual product.

#### ***Inspection Fee***

The bill requires each distributor to pay the commissioner an inspection fee for all fertilizer that they distribute to nonregistrants in Connecticut. Under current law, the commissioner establishes this fee through regulation, but it must be at least 25¢ per ton. The bill sets the fee at 25¢ per ton and the minimum inspection fee at \$10. It exempts all sales and exchanges between manufacturers and sales by distributors from the fee, removing current law’s exemption for such transactions of less than 10 tons. (Presumably this means distributors who sell directly to consumers at retail are exempt, as the bill requires a fee on distributions to nonregistrants.)

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**Fertilizer Registration Report**

The bill changes reporting requirements. It eliminates the law requiring (1) anyone registering commercial fertilizers to furnish the commissioner with a confidential written statement of the tonnage of each grade of commercial fertilizer that he or she annually sells in the state and (2) the commissioner to provide a copy of the registration to the applicant once approved. This information is protected and cannot be disclosed in a way that divulges anyone's operations.

It also eliminates the law that specifies that when more than one person is involved in commercial fertilizer distribution, the last person who registers the fertilizer and who distributes to a nonregistered dealer or consumer is responsible for reporting the tonnage and paying the inspection fee, unless an earlier distributor did this.

Instead, the bill requires anyone who distributes or sells fertilizer to a customer to provide the commissioner with a written report detailing:

1. the county of the consignee of such fertilizer;
2. the amount, in tons or fractions of tons, of each grade of such fertilizer; and
3. the form in which the fertilizer was distributed, including bags, bulk, or liquid.

They must submit the written report to the commissioner no later than July 30 for distributions or sales made during the preceding 12 months.

The bill prohibits the commissioner from disclosing any identifying information on a person who submitted a report to a third party (presumably this protects the information, as well as information about the person).

**Distributor's Annual Statement**

By law, anyone who distributes fertilizer in the state must annually

file with the commissioner, on forms he provides, an annual statement for the year ending June 30 stating the number of net tons of each commercial fertilizer distributed in the state. Under current law, the report is due on or before July 15th and must be accompanied by an inspection fee. The bill changes the due date to July 30.

Under current law, if the tonnage report is not filed and the inspection fee is not paid within 60 days of June 30, a collection fee of 10% of the amount due, which must be at least \$10, is assessed against the registrant and may be collected by legal action. The bill eliminates the \$10 minimum.

### **FERTILIZER USE AND STORAGE (§ 15)**

The bill explicitly requires that fertilizer use and application comply with best management practices and with regulations the commissioner adopts. It requires bulk fertilizers to be stored in a way that minimizes their release and protects the environment. By law, "bulk fertilizer" is distributed in a nonpackaged form.

### **INSPECTIONS (§ 8)**

The law permits the DOAG commissioner or his authorized agent to enforce commercial fertilizer statutes. Under current law, the commissioner or his agent, during normal business hours, may (1) enter any factory, warehouse, or establishment in the state where commercial fertilizers are manufactured, processed, packed, or held for distribution; (2) enter any vehicle used to transport or hold fertilizers; and (3) inspect, in a reasonable manner, buildings and vehicles and all pertinent equipment, finished and unfinished materials, containers, and labeling in them.

The bill specifies that the commissioner or agent may also enforce fertilizer regulations and removes the requirement that he (1) complete inspection during normal business hours in a reasonable manner and (2) sample fertilizer during regular business hours.

It specifies that analytical methods and sampling, which, under current law, must be those adopted by the director of the Connecticut

Agriculture Experiment Station and commissioner from recognized authorities, such as the Journal of the Association of Official Analytical Chemists, be those adopted by the Association of Official Analytical Chemists International.

Under current law, the director must forward the results of the official analysis to the commissioner, registrant, and distributor. When asked, the director must give the registrant a portion of any sample found that is subject to penalty or other legal action. The bill requires the director to retain official samples for which penalties are assessed for nutritional deficiencies for at least 90 days after the deficiency report is issued.

## **FERTILIZER CONTENT AND PENALTIES (§§ 8-9)**

### ***Penalties***

Current law requires that violators pay all penalties assessed for fertilizer content violations to the consumer of the commercial fertilizer lot represented by the sample analyzed. They must pay within three months after the date commissioner notifies them and promptly forward receipts to the commissioner. If a consumer cannot be found, the penalty must be paid to the commissioner who must remit the money to the treasurer for deposit in the General Fund. This applies only to purchases of one ton or more of fertilizer.

The bill eliminates the one-ton exception and the requirement for receipts.

### ***When Subject to Penalties***

Under the bill, when the commissioner finds satisfactory evidence that a person (1) has altered the content of fertilizer a registrant supplied or (2) mixed or commingled fertilizer from two or more suppliers, and the result of either alteration changes the fertilizer's originally guaranteed analysis, the commissioner must require the person to obtain a registration and hold the person liable for all applicable penalty payments. The person is also subject to any other applicable provisions of the bill or regulations, including seizure,

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condemnation, and the commissioner's stop sale order.

The bill specifies that a deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not the same as deficiency due to actual plant nutrient shortage and subject to action by the commissioner.

The bill specifies that its provisions do not prevent anyone from commencing an action in Superior Court for damages or penalty payments relating to fertilizer or fertilizer material.

***Lot "Stop Sale, Use, or Removal" and Seizure (§§ 18 and 19)***

By law, the commissioner may issue and enforce a "stop sale, use or removal" order to the owner or custodian of any fertilizer lot to hold the fertilizer at a designated place when the commissioner finds it is being offered for sale in violation of the statutes. The order is effective until the lot owner or custodian complies with the law, after which the fertilizer is released. The bill extends this enforcement power to any regulations the commissioner adopts.

The bill eliminates the requirement that the commissioner seek a court order to seize any lot of fertilizer not in compliance with the law, thus allowing him to act on his own authority. It explicitly extends this enforcement power to violations of regulations he adopts.

The bill also transfers from the court to the commissioner (1) the ability to condemn seized fertilizer and have it disposed of and (2) the requirement to give the claimant an opportunity to ask for the lot to be released, or processed or relabeled to bring it in compliance with the law.

***Misbranded and Adulterated Fertilizer (§§ 11, 13, and 24)***

By law, distributing misbranded fertilizer is prohibited. The bill slightly expands what constitutes misbranded fertilizer. Under current law, a commercial fertilizer is misbranded if it carries a false or misleading statement on the container or the label attached to the container, or if false or misleading statements concerning it are

disseminated in any manner or by any means. The bill specifies that a fertilizer is misbranded if:

1. its labeling is false or misleading,
2. the fertilizer is distributed under the name of another fertilizer product,
3. the fertilizer is not labeled as the bill or any regulations the commissioner adopts requires, or
4. the product is represented as a fertilizer or as containing a plant nutrient or fertilizer when it or does not conform to regulatory requirements.

The bill explicitly prohibits the distribution of adulterated fertilizer. Under the bill, a fertilizer is considered adulterated if the commissioner determines the:

1. fertilizer contains any deleterious or harmful substance in sufficient amounts to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on its label;
2. label for such fertilizer does not contain adequate warning statements or directions for use necessary to protect plant life, animals, humans, aquatic life, soil, or water;
3. fertilizer's composition falls below or differs from that displayed on the label; or
4. fertilizer contains unwanted crop or weed seed.

The bill eliminates a penalty for fertilizer the commissioner finds to be short in weight.

### **VIOLATIONS (§20)**

Under current law, if, after examining any commercial fertilizer, the commissioner believes anyone has violated any applicable law or a

regulation, he must notify the registrant, distributor, or possessor whose product was examined. These parties have the opportunity to a hearing before the commissioner. After the hearing if the commissioner determines a violation has occurred, he can bring the facts to the state's attorney for prosecution. If convicted, the person faces a fine of up to \$500.

The bill removes the requirement that the commissioner bring the case to the state's attorney for prosecution, thus allowing the commissioner to impose the penalty directly. The bill expands the potential fine to \$500 for each violation.

### **GOVERNMENT COOPERATION IN FERTILIZER REGULATION (§ 22)**

The bill explicitly allows the commissioner to cooperate and enter into agreements with other state and town agencies, other states, and the federal government to carry out the purpose of the law and regulations.

### **DEFINITIONS (§ 4)**

The bill adds several new definitions to the fertilizer law. Under the bill:

1. "label" means the display of all written, printed, or graphic matter on a fertilizer container or a written statement accompanying a fertilizer;
2. "labeling" means all written, printed, or graphic matter on or accompanying any fertilizer, or advertisements, brochures, posters, television or radio announcements, and Internet web site content used in promoting the sale of any fertilizer;
3. "investigational allowance" means an allowance for variations inherent in taking, preparing, and analyzing an official sample of fertilizer;
4. "deficiency" means the amount of nutrient found by analysis that is less than that guaranteed, which may result from a lack of

nutrient ingredients or from lack of uniformity;

5. "blender" means any person or system in the business of blending fertilizer by using mobile or fixed equipment;
6. "blending" means the physical mixing or combining of the following to produce a uniform mixture (a) one or more fertilizer materials and one or more filler materials, (b) two or more fertilizer materials, or (c) two or more fertilizer materials and filler materials; and
7. "application" means the process of placing or using fertilizer on a targeted growing area.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 29 Nay 0 (03/13/2009)