1. ------IND- **2006 0430 NL- EN-** ------ 20060907 --- --- PROJET

DRAFT

WE BEATRIX, BY THE GRACE OF GOD,
QUEEN OF THE NETHERLANDS,
PRINCESS OF ORANGE-NASSAU,
ETC., ETC., ETC.

Decree of...., amending the
Decree implementing the Fertiliser Act and the
Decree on the use of fertiliser
(transfer of the 1947 Fertiliser Act and the Decree
on the quality and use of other organic fertiliser)

In response to a proposal from Our Minister for Agriculture, Nature and Food Quality dated ....., ref. TRCJZ/2006/..., Legal Affairs Department, also on behalf of the State Secretary for Housing, Planning and the Environment;

Having regard to Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJEC L 181), to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJEC L 375) and Regulation (EC) 2003/2003 of the European Parliament and the Council of 13 October 2003 relating to fertilisers (OJEU L 304);

Having regard to Articles 4, 15, 34, 35, 36, 37 and 44 of the Fertiliser Act and Articles 6, 7, 11, 15, 17, 65, 91 and 92 of the Soil Protection Act;

Having heard the Council of State (advice of ……, ref. ……);

Having studied the more detailed report of Our Minister for Agriculture, Nature and Food Quality, also issued on behalf of the State Secretary for Housing, Planning and the Environment of .., TRCJZ/2006/...,...., Legal Affairs Department;

HAVE APPROVED AND UNDERSTOOD THE FOLLOWING:

Article I

The Decree implementing the Fertiliser Act[1] shall be amended as follows:

A. Article 1 shall be amended as follows:

[1] Bulletin of Acts and Decrees 2005,

1. The designation “1.” shall be placed before the text.
2. Sub-section g shall be worded as follows:
   g. sewage sludge:
      1. sludge originating from an installation for the purification of household, urban or industrial wastewater, or other wastewater whose composition is similar to household, urban and industrial wastewater; or
      2. sludge originating from septic tanks and other installations for the collection, discharge and treatment of wastewater, with the exception of grease and sand traps;
3. Sub-sections i-u shall be re-lettered to sub-sections r-dd.
4. The following sub-sections shall be inserted after sub-section h:
   i. very clean compost: compost that meets Article 17, fourth paragraph;
   j. Fertiliser Regulation: Regulation (EC) No 2003/2003 of the European Parliament and the Council of 13 October 2003 relating to fertilisers (OJEU L 304);
   k. inorganic fertiliser: fertiliser in which the indicated nutrients occur in the form of minerals that are acquired through extraction or through physical and chemical industrial processes, as well as calcium cyanamide, ureum and their condensation and associated products, and fertiliser that contains chelate-shaped or complex-shaped micro-nutrients as referred to in the Fertiliser Regulation;
   l. EC fertiliser: fertiliser indicated as “EC fertiliser” which belongs to a type of fertiliser indicated in Annex I to the Fertiliser Regulation and which complies with the regulations prescribed by or pursuant to this Regulation;
   m. other inorganic fertiliser: inorganic fertiliser which does not belong to a type of fertiliser indicated in Annex I to the Fertiliser Regulation;
   n. organic fertiliser: fertiliser not being inorganic fertiliser;
   o. other organic fertiliser: organic fertiliser not being animal fertiliser, sewage sludge or compost;
   p. lime fertiliser: organic or inorganic fertiliser that is mainly intended to maintain, or reduce, the acidity level in the soil;
   q. waste substances: waste substances as referred to in Article 1.1 of the Environmental Management Act;
5. The following paragraph shall be added after the first paragraph:
   2. The definition of primary nutrients, secondary nutrients, micro-nutrients and liquid fertiliser shall be as that provided for by the Fertiliser Regulation.

B. Chapter III shall read as follows:

Chapter III. Trading in fertiliser

Section 1. General requirements

Article 4

1. It is prohibited to trade in fertiliser
2. The ban does not apply if, with regard to this fertiliser, the following have been met: Articles 5, 6, 7, second paragraph, 19, the rules prescribed pursuant to Articles 7, first paragraph, and 21:

a. Articles 8, 9, 14 and 18, insofar as inorganic fertiliser is concerned;
b. Articles 10, 14 and 15, insofar as lime fertiliser is concerned;
c. Article 16, insofar as sewage sludge is concerned;
d. Article 17, insofar as compost is concerned; and
e. Articles 11, 12, 13, 14 and 15, insofar as other organic fertiliser is concerned.

3. The ban laid down in the first paragraph does not apply to the trade in:
   a. EC fertiliser;
   b. fertiliser as referred to in Article 1, sub-section d, under 2, of the law; and
   c. animal excrements, including the digested stomach or intestinal content, either wholly or in part, of those animals and mixtures of litter with excrements, as well as products thereof, insofar as no fertiliser or substances other than the fertiliser that meets the rules referred to in the second paragraph or substances that are designated pursuant to Article 5, second paragraph, have been added.
4. Chapter 10 of the Environmental Management Act applies to products that contain, or are made from, waste substances, either wholly or in part, and which, according to their label or other, are apparently intended for use as fertiliser, insofar as those products do not meet the rules referred to in the second paragraph.

Article 5

1. Fertiliser, with the exception of sewage sludge and compost, is not, either wholly or in part, made from waste substances or from residues, or mixed in with those substances in any other way, unless the substances concerned are those designated pursuant to the second paragraph.
2. By ministerial regulation, waste substances or residues, categories of waste substances or residues or end products of processing procedures described in this Regulation may be designated, if, in Our Minister's opinion, there are no agricultural or environmental objections to those substances being used as fertiliser or in the production of fertiliser.

Article 6

1. The fertiliser is in a usable condition for practical purposes and is homogeneous in terms of composition.
2. The fertiliser provides food for plants or parts of plants in the form of primary or secondary nutrients or micro-nutrients, or improves the soil characteristics by supplying organic substance or by maintaining or reducing the soil's acidity level and is very effective in carrying out the substance's main function.
3. Under normal conditions of use, the fertiliser has no harmful effects on human, animal or plant health, or on the environment for that matter.
4. The fertiliser contains no active ingredient in respect of which the ban, referred to in Article 2a of the 1962 Pesticides Act, applies.

Article 7

1. By ministerial regulation, rules can be laid down with regard to the permissibility of mixing fertiliser.

2. Fertiliser can be mixed with soil components, insofar, with regard to those soil components, the rules prescribed by or pursuant to the Soil Quality Decree have been met.

Section 2. Agricultural requirements

Article 8
Inorganic fertiliser that belongs to the type of fertiliser mentioned in Annex I to the Fertiliser Regulation, shall meet the regulations prescribed by or pursuant to that Regulation.

Article 9
1. Other inorganic fertiliser whose main objective is to supply primary nutrients contains at least one of the following nutrients, in the minimum quantities mentioned in that connection, and expressed in weight percentages of dry matter:
   a. fertiliser, intended to supply nitrogen:
      - nitrogen (N) total 5;
   b. fertiliser, intended to supply phosphate:
      -phosphate (P2O5) total 5;
   c. fertiliser, intended to supply potash:
      -potash (K2O) that can be dissolved in water 5.
2. Other inorganic fertiliser whose main objective is to supply secondary nutrients or micro-nutrients, contains at least one of the nutrients, designated by ministerial regulation or micro-nutrients, in the minimum quantity laid down by this Regulation:
3. No organic material is used during the production of other inorganic fertiliser.

Article 10
Lime fertiliser has a neutralising value of at least 25 on the basis of dry matter.

Article 11
Other organic fertiliser whose main objective is to supply organic substance, contains at least 20 weight percentages of organic substance of the dry matter.

Article 12
1. Solid other organic fertiliser whose main objective is to supply primary nutrients, contains at least one of the following nutrients, in the minimum quantities mentioned in that connection, and expressed in weight percentages:
   a. fertiliser, intended to supply nitrogen:
      - nitrogen (N) total 0.5;
   b. fertiliser, intended to supply phosphate:
      -phosphate (P2O5) total 0.5;
   c. fertiliser, intended to supply potash:
      -potash (K2O) that can be dissolved in water 0.5.
2. Liquid other organic fertiliser whose main objective is to supply primary nutrients, contains at least one of the following nutrients, in the minimum

quantities mentioned in that connection, and expressed in weight percentages of dry matter:

a. fertiliser, intended to supply nitrogen:
   - nitrogen (N) total 0.5;
b. fertiliser, intended to supply phosphate:
   -phosphate (P2O5) total 0.5;
c. fertiliser, intended to supply potash:
   -potash (K2O) that can be dissolved in water 0.5.

3. In other organic fertiliser, organic nitrogen accounts for at least 85% of the total quantity of nitrogen.

Section 3. Environmental requirements

Article 13
Other organic fertiliser does not contain any biologically degradable parts with diameters in excess of 50 mm and not more than 0.5 weight percentage of non-soil-based, non-biologically degradable parts.

Article 14
Inorganic fertiliser, other organic fertiliser, lime fertiliser, as well as substances which, pursuant to Article 5, second paragraph, are used as fertiliser or during the production of fertiliser, do not exceed the maximum values for heavy metals included in Annex II, under Table 1, to this Decree, and expressed in mg per kg of the relevant beneficial components.

Article 15
Other organic fertiliser, lime fertiliser, as well as substances which, pursuant to Article 5, second paragraph, are used as fertiliser or during the production of fertiliser, do not exceed the maximum values for organic micro-pollutants included in Annex II, under Table 5, to this Decree, and expressed in mg per kg of the relevant beneficial components.

Section 4. Requirements in respect of sewage sludge and compost

Article 16
1. Sewage sludge has been treated biologically, chemically or thermally, by long-term storage or according to any other suitable procedure, which results in most of the pathogenic organisms that are present in the sewage sludge dying off.
2. Sewage sludge contains at least 50 weight percentages of organic substance of dry matter or has a neutralising value of 25 on the basis of the dry matter.
3. Sewage sludge does not exceed the maximum values for heavy metals, included in Annex II, under Table 2, to this Decree, expressed in mg per kg of dry matter.

Article 17
1. Compost does not contain any biologically degradable parts with diameters in excess of 50 mm and not more than 0.5 weight percentage of non-soil-based, non-biologically degradable parts.

2. Compost contains at least 20 weight percentages of organic substance of dry matter
3. Compost does not exceed the maximum values for heavy metals, included in Annex II, under Table 3, to this Decree, expressed in mg per kg of dry matter.
4. Very clean compost does not exceed the maximum values for heavy metals, included in Annex II, under Table 4, to this Decree, expressed in mg per kg of dry matter.

Section 5. Packaging and labelling

Article 18

1. Other inorganic fertiliser whose main objective is to supply micro-nutrients is packaged.
2. With regard to packaged fertiliser, the packaging is closed in such a way or by means of such a system that by opening it, the sealing device, the sealing stamp or the packaging itself will be irreparably damaged.

Article 19

1. Fertiliser shall in any event be accompanied with information on:
   a. the type of fertiliser;
   b. the name or the trade name of the manufacturer of the fertiliser;
   c. the name or the trade name of the fertiliser;
   d. the main effect of the fertiliser;
   e. the beneficial components that are present;
   f. the quantity; and
   g. the composition.
2. In the case of packaged fertiliser, the information shall be included on the packaging or displayed on a label that is attached to the packaging, and in the case of non-packaged fertiliser, the information shall be included on an accompanying document.
3. The information shall be indelible and clearly legible.
4. Fertiliser is accompanied with instructions for use.
5. Liquid fertiliser is accompanied with additional instructions on storage temperature and the safety measures to be observed during storage.
6. The information on the labels, the packaging and on the accompanying documents shall in any event be in Dutch.

Section 6. Other provisions

Article 20

Article 4, first paragraph, does not apply to fertiliser:

a. that has been lawfully produced or introduced onto the market in another Member State of the European Union or in a State, other than a Member State of the European Union, that is party to a relevant or partly relevant Treaty that is binding upon the Netherlands;
b. that meets requirements which offer a protection level that at least equals the level that is pursued with rules prescribed by or pursuant to Articles 5 to 19; and

c. that is accompanied with an analysis report which provides sufficient information about the composition of the product and has been issued by a laboratory recognised in that Member State or State that is equivalent to a laboratory recognised for this purpose in the Netherlands.

Article 21

1. Rules may be laid down by ministerial regulation concerning the following aspects:
   a. requirements which waste substances or residues of organic, animal or vegetable origin must meet;
   b. requirements which the processing procedure of sewage sludge and of other waste substances or residues of organic, animal or vegetable origin must meet, which requirements may also pertain to the substances to be processed;
   c. the homogeneity, the stability or uniformity of the composition of the fertiliser;
   d. the way in which the presence of heavy metals, beneficial components, organic substance, organic micro-pollutants and the further composition of fertiliser is determined;
   e. The fertiliser's instructions for use;
   f. the other information with which fertiliser is accompanied;
   g. the way in which the information is applied; and
   h. the cases in which, and the conditions under which, Articles 5 to 19 do not apply, either wholly or in part.
2. The rules referred to in the first paragraph, sub-section d, can also pertain to the competence to determine values referred to in that sub-section and with regard to the equipment that pertains to those values.
3. The rules to be prescribed pursuant to the first paragraph can be laid down differently according to the types of fertiliser to be distinguished in the Regulation and the fertiliser's intended purpose.

C. In Article 39, third paragraph, title and sub-section b, "animal fertiliser" shall be replaced by: animal fertiliser or sewage sludge.

D. Article 41 shall be amended as follows:
   1. At the end of sub-section d, the word "and" shall be dropped.
   2. By re-lettering sub-section e to sub-section f, the following sub-section shall be inserted:
      e. the cases in which, and the conditions under which, Articles 38, 39 or 40 do not apply, either wholly or in part; and

E. In Article 43, by re-numbering the second to fourth paragraphs to the third to fifth paragraphs, the following paragraph shall be inserted:
   2. The entrepreneur who runs one or more enterprises within the framework of which fertiliser, excluding animal fertiliser, sewage sludge, compost or mixtures of sewage sludge and compost, is traded, shall report each of those enterprises separately for registration to Our Minister.

F. Article 44 shall be amended as follows:

1. In the third paragraph, after “mixtures of sewage sludge and compost,” the following shall be inserted: are traded.
2. In the fourth paragraph, sub-section a, “the quantities of fertiliser supplied by the entrepreneur for each company”, shall be replaced by: the quantities of fertiliser supplied by the entrepreneur per enterprise or per company to traders in, or users of, fertiliser, excluding private persons.
3. By re-numbering the fifth and sixth paragraphs to sixth and seventh paragraphs, the following paragraph shall be inserted:
   5. If fertiliser is treated or processed at an enterprise, the administration shall also contain information on:
      a. the method of treatment or processing;
      b. the quantity of treated or processed fertiliser;
      c. the quantity, nature and composition of the substances treated or processed together with the fertiliser; and
      d. the quantity and composition of the end products of the treatment or process.

G. Article 46 shall be amended as follows:
1. At the end of sub-section c, the word “and” shall be dropped.
2. At the end of sub-section d, the full-stop shall be replaced by. and.
3. After sub-section d, the following sub-section shall be added:
   e. the cases in which, and the conditions under which, Articles 43, 44 or 45 do not apply, either wholly or in part.

H. In Article 50, second paragraph, “sewage sludge, compost or mixtures of sewage sludge and compost” shall be replaced by: sewage sludge, compost, mixtures of sewage sludge and compost or other organic fertiliser designated pursuant to Article 55, first paragraph.

I. The heading of Chapter IX, Section 3 shall be worded as follows:
Section 3. Proof of transport in respect of sewage sludge and compost

J. Articles 55 and 56 shall be worded as follows:
Article 55
1. With regard to the transport of sewage sludge, compost, mixtures of sewage sludge and compost and other organic fertiliser designated by ministerial regulation, the supplier, the carrier and customer will jointly compile proof of transport.
2. The supplier shall ensure that the proof of transport shall be completed in accordance with the rules pursuant to Article 56 in full and truthfully, and shall be signed by the supplier, the carrier and the customer.
3. Proof of transport shall be laid down by ministerial regulation and shall in any event contain information on:
   a. the supplier, carrier and customer;
   b. the quantity of fertiliser;
   c. the composition of fertiliser; and
   d. the type of fertiliser;
4. The carrier and customer shall keep a copy of the proof of transport as part of their administration, referred to in Article 32 and Article 39.
5. Article 53, fourth and fifth paragraph, shall apply *mutatis mutandis*.

6. Proof of transport shall be submitted to Our Minister.

Article 56

Rules may be laid down by ministerial regulation concerning the following aspects:

a. other information to be specified on the proof of transport;
b. the way in which, and date on which, the proof of transport is compiled and signed by the supplier, the carrier and the customer;
c. the way in which, and date on which, the proof of transport is submitted; and
d. the cases in which, and the conditions under which, Articles 55, does not apply, either wholly or in part.

K. Article 77 shall now read as follows:

Article 77

1. By way of deviation from Article 4, first paragraph, the trade in fertiliser, excluding EC fertiliser, in respect of which the rules prescribed by or pursuant to this Decree have not been met, is permitted until a date to be stipulated by ministerial regulation, insofar as with regard to this fertiliser, the rules prescribed by or pursuant to the 1977 Fertiliser Decree have been met, as these read on 31 December 2006, or insofar as with regard to this fertiliser, pursuant to Article 7 of the 1977 Fertiliser Decree, as it read on 31 December 2006, exemption has been granted, provided that this fertiliser is traded in accordance with the regulations and restrictions that apply to such exemption.
2. The date to be determined pursuant to the first paragraph can be different for the fertilisers to be distinguished in that paragraph and is between 1 January 2008 and 1 January 2011.

L. Annex II shall be replaced by Annex A included in this Decree, by replacing the title “Annex A” by the following “Annex II to the Decree implementing the Fertiliser Act”.

Article II

The Decree on the use of fertiliser shall be amended as follows:

A. Article 1 shall be amended as follows:

1. In the preamble of the first paragraph, the phrase “and the following shall be understood by”, shall be replaced by: sewage sludge, compost, very clean compost, lime fertiliser and other organic fertiliser shall be taken to mean what it says under Article 1, first paragraph, of the Decree implementing the Fertiliser Act.
2. The first paragraph, sub-section c, shall now read as follows:
   c. grassland: land in respect of which at least 50% is accounted for by grass which, according to the use of the land, is intended for feeding cattle by putting animals out to graze or by cutting the crop for animal feed;
3. In the first paragraph, sub-section f, under 1, “the Nature Protection Act or” shall be deleted;
4. The first paragraph, sub-section h, shall now read as follows:

h. nitrogen artificial fertiliser: inorganic fertiliser as referred to in Article 1, first paragraph, sub-section k, of the Decree implementing the Fertiliser Act, which contains more than 5 weight percentages of dry matter of nitrogen;

5. By re-lettering sub-sections k-o, to m-q, the following sub-sections shall be inserted:
   k. semi-solid sewage sludge: sewage sludge that is not pumpable;
   l. liquid sewage sludge: sewage sludge that is pumpable;
6. In sub-section n (new) “Annex II” shall be replaced by: Annex I:
7. In sub-section p (new) “Annex III” shall be replaced by: Annex II:
8. By re-numbering the second paragraph to fourth paragraph, the following paragraphs shall be inserted:
   2. For the purposes of Articles 1b, third paragraph, and 1e, third paragraph, the situation on 15 May of the year in which sewage sludge, compost or other organic fertiliser is used, is decisive in the question whether the land involved is building land or grassland, on the understanding that if on 15 May of the year in question agricultural land is not cultivated, this land is designated as building land, unless the land is not cultivated all year round, in which case the land will be designated as other land.
   3. For the purposes of Article 4b, grassland shall be defined as follows: Land, at least 50% of which is covered by grass which is being, or has been, used for putting animals out to graze or for cutting the crop for animal feed;

B. The following article shall be added after the Article 1:

Article 1a

1. It is prohibited to use fertiliser
2. The ban stipulated in the first paragraph does not apply if the fertiliser complies with the requirements prescribed by or pursuant to Chapter III of the Decree implementing the Fertiliser Act and if it is used in accordance with the instructions for use, with which fertiliser is accompanied pursuant to Article 19, fourth paragraph, of the Decree implementing the Fertiliser Act.
3. The ban stipulated in the first paragraph does not apply to the use of compost if the party who uses the compost is also the party that has produced it from organic waste substances exclusively released on his farm or his private household.

C. After Article 1a (new), the following section shall be inserted:
Section 1a. Use of sewage sludge, compost and other organic fertiliser

Article 1b

1. It is prohibited to use sewage sludge and other organic fertiliser.
2. The ban stipulated in the first paragraph does not apply to the use of other organic fertiliser on agricultural land.
3. The ban stipulated in the first paragraph does not apply to the use of sewage sludge on parcels of agricultural land in respect of which, according to the rules prescribed pursuant to Article 1c, it has been

stipulated that one or more of the substances present in the soil do not exceed the test values included in Annex III and insofar as:
   a. in the case of liquid sewage sludge, the quantity used does not exceed:
      i. two tonnes of dry matter per hectare per year on building land; or
      ii. one tonne of dry matter per hectare per year on grassland; or
   b. in the case of semi-solid sewage sludge, the quantity used does not exceed:
      i. four tonnes of dry matter per hectare per two years on building land; or
      ii. two tonnes of dry matter per hectare per two years on grassland.
4. During the periods specified in the third paragraph, the use of the soil shall remain unchanged for the relevant number of hectares.
5. To that extent, by way of deviation from the third paragraph, the ban included in the first paragraph does not apply to the use of sewage sludge on parcels of agricultural land in respect of which, in accordance with the rules prescribed pursuant to Article 16 of the Decree on the quality and use of other organic fertiliser, as these read on 31 December 2006, it is stipulated that one or more of the substances that are present in the soil do not exceed the test values included in Annex III.

Article 1c

1. Before sewage sludge is used on agricultural land, the soil shall be sampled and analysed.
2. By ministerial regulation, rules may be laid down with regard to the sampling and analysis referred to in the first paragraph, which can, *inter alia*, pertain to the method of sampling and analysis, requirements to be met by the bodies that need to carry out the sampling and analysis, as well as rules with regard to the storage and submitting of analysis results.

Article 1d

It is prohibited to use sewage sludge and other organic fertiliser or a mixture involving this fertiliser:

a. on pasture land: during the period of grazing;
b. on soil that is used for cultivating feed crops: less than three weeks before the harvest;
c. on soil that is used for planting vegetables or fruit, with the exception of fruit trees: during the growth period of the vegetables or fruit;
d. on soil that is intended for growing vegetables or fruit which are usually in direct contact with the soil and that are eaten raw: less than 10 months before the harvest or during the harvest.

Article 1e

1. It is prohibited to use compost.
2. The ban stipulated in the first paragraph does not apply to the use of very clean compost or to the use of compost if the party who uses the compost is also the party that has produced it from organic waste substances exclusively released on their farm or their private household.
3. The ban stipulated in the first paragraph does not apply to the use of compost on agricultural soil and on other soil, insofar as the quantity of compost used does not exceed

a. six tonnes of dry matter per hectare per year or 12 tonnes of dry matter per hectare per two years or 30 tonnes of dry matter per hectare per five years on building land or other land; or
b. three tonnes of dry matter per hectare per year or six tonnes of dry matter per hectare per two years or 15 tonnes of dry matter per hectare per five years on grassland.

4. During the periods specified in the third paragraph, the use of the soil shall remain unchanged for the relevant number of hectares.
5. The ban stipulated in the first paragraph does not apply to the use of compost on managed nature areas, if such management is subject to restrictions with regard to the quantity of compost used and the use thereof is in agreement with the above.
6. The ban stipulated in the first paragraph does not apply to the use of compost on nature areas, if such areas are not subject to restrictions with regard to the quantity of compost used and at least one of the following conditions is met:
   a. the total amount of compost and animal fertiliser used, expressed in kg of phosphate, does not exceed 20 kg of phosphate per hectare per year;
   b. the nature area is grassland and the total amount of compost and animal fertiliser used on it, expressed in kg of phosphate and nitrogen, does not exceed 70 kg of phosphate, or 170 kg of nitrogen per hectare per year.

Article 1f

1. By way of deviation from Article 1e, third paragraph, it is permitted to use compost on other land as a one-off measure in a quantity of no more than 200 tonnes of dry matter per hectare, provided Our Minister for Agriculture, Nature and Food Quality has been notified prior to the use.
2. The notification referred to in the first paragraph shall comprise:
   a. b. the user's name and address;
   b. a land registry or topographical designation of the relevant parcel as well as an indication of the surface area of the location;
   c. name and address of the product's supplier; and
   d. the quantity to be used.
3. The use referred to in the first paragraph may not be started until confirmation of receipt of the notification by the user has been received.

D. Article 2 shall be amended as follows:
   1. In the third paragraph, sub-section a, "the quantity of animal fertiliser used" shall be replaced by: the total quantity of animal fertiliser and compost used.
   2. In the third paragraph, sub-section b "the quantity of animal fertiliser used thereon" shall be replaced by: the total quantity of animal fertiliser and compost used thereon.

E. The heading of Section 3 shall read as follows:
   Section 3 Use of animal fertiliser, nitrogen artificial fertiliser, sewage sludge, compost and other organic fertiliser

F. In Article 3, first paragraph, “animal fertiliser or nitrogen artificial fertiliser” shall be replaced by: animal fertiliser, nitrogen artificial fertiliser, sewage sludge or a mixture involving this fertiliser.

G. In Articles 3a, 3b, first paragraph, 6, 6a, first paragraph, and 6d “animal fertiliser or nitrogen artificial fertiliser” shall each time be replaced by: animal fertiliser, nitrogen artificial fertiliser, sewage sludge, compost, other organic fertiliser or a mixture involving this fertiliser.

H. Article 4 shall be amended as follows:
   1. In the first paragraph “animal fertiliser” shall be replaced by: animal fertiliser, sewage sludge or a mixture involving this fertiliser.
   2. In the third paragraph “solid animal fertiliser” shall be replaced by: solid animal fertiliser and semi-solid sewage sludge.
   3. In the fourth and fifth paragraphs, “semi-liquid manure” shall each time be replaced by: semi-liquid manure and liquid sewage sludge.

I. Article 4b shall be amended as follows:
   1. In the second paragraph “the cultivation of a crop, mentioned in Annex I,” shall be replaced by: the cultivation of a relatively nitrogen-needy crop designated by ministerial regulation.
   2. In the third paragraph “fertiliser” shall be replaced by “fertiliser containing nitrogen” and the phrase starting with “, or by a comparable institution” and ending with “shall be pursued” shall be deleted.

J. Article 5 shall be amended as follows:
   1. In the first paragraph “animal fertiliser” shall be replaced by: animal fertiliser, sewage sludge or a mixture involving this fertiliser.
   2. In the third paragraph “solid animal fertiliser” shall be replaced by: solid animal fertiliser and semi-solid sewage sludge.

K. In Article 6b, first paragraph, “animal fertiliser” shall be replaced by: animal fertiliser, sewage sludge, compost, other organic fertiliser or a mixture involving this fertiliser.

L. In Article 8, first paragraph, “for the benefit of experiments involving the use of animal fertiliser on building land, fallow land or non-cultivated land, located on sandy or loessial soil” shall be replaced by: for the benefit of experiments involving the use of animal fertiliser on building land or non-cultivated land, located on sandy or loessial soil, or for the benefit of experiments involving the use of compost, sewage sludge or other organic fertiliser on building land located on sandy or loessial soil.

M. In Article 8a, first paragraph, “grass, winter rye, cabbage or winter radish” shall be replaced by: a crop designated by ministerial regulation.

N. Article 9 shall now read as follows:
   Article 9
   A laboratory as referred to in Article 4b, third paragraph, shall be equated with a similar institution, based in another Member State of the European Union, or

another State that is party to a relevant Treaty that is binding upon the Netherlands, which has issued a declaration on the basis of studies that meet a quality protection level that is at least equivalent to that which is pursued by means of national studies.

O. Annex I shall be deleted.

P. Annex II shall be amended as follows:
   1. The title shall be replaced by: Annex I to the Decree on the use of fertiliser.
   2. In the first to fourth sub-sections “animal fertiliser” shall each time be replaced by “animal fertiliser of sewage sludge” and “manure” shall each time be replaced by: manure or sludge.
   3. The fourth sub-section shall be amended as follows:
      a. The preamble of sub-section a shall now read as follows:
         a. In the case of the low-emission use of semi-liquid manure or liquid sewage sludge, after 31 December 2007, manure or sludge shall become:
      b. In sub-section b, “solid manure” shall be replaced by: solid manure or semi-solid sewage sludge.

Q. The title of Annex III shall be replaced by: Annex II to the Decree on the use of fertiliser.

R. After Annex II (new), Annex B included in this Decree shall be inserted, and the title “Annex B” shall be replaced by the title “Annex III to the Decree on the use of fertiliser”.

S. Annex IV shall be deleted.

ARTICLE III
The Decree on the quality and use of other organic fertiliser shall be repealed.

Article IV
This Decree shall enter into force at a time to be determined by Royal Decree which may vary for the different articles or sub-sections thereof.

Cause and order that this Decree and the explanatory notes thereto be published in the Bulletin of Acts and Decrees.

THE HAGUE,

THE MINISTER FOR AGRICULTURE, NATURE
AND FOOD QUALITY,

THE SECRETARY OF STATE FOR HOUSING,
PLANNING AND THE ENVIRONMENT,

Annex A

Table 1 Maximum values for heavy metals in fertiliser per kg of the relevant beneficial component.

Heavy metals	Quality standard in mg per kg of the relevant beneficial component				
	phosphate	nitrogen	potassium	neutralising value	organic substance
Cd (Cadmium)	31.3	25	16.7	6.3	0.8
Cr (Chromium)	1875	1500	1000	375	50
Cu (Copper)	1875	1500	1000	375	50
Hg (Mercury)	18.8	15	10	3.8	0.5
Ni (Nickel)	750	600	400	150	20
Pb (Lead)	2500	2000	1333	500	67
Zn (Zinc)	7500	6000	4000	1500	200
As (Arsenic)	375	300	200	75	10

Table 2 Maximum values for heavy metals in sewage sludge per kg of dry matter (dm).

Heavy metals	in mg per kg
Cd (Cadmium)	1.25 mg/kg dm
Cr (Chromium)	75 mg/kg dm
Cu (Copper)	75 mg/kg dm
Hg (Mercury)	0.75 mg/kg dm
Ni (Nickel)	30 mg/kg dm
Pb (Lead)	100 mg/kg dm
Zn (Zinc)	300 mg/kg dm
As (Arsenic)	15 mg/kg dm

Table 3 Maximum values for heavy metals in compost per kg of dry matter (dm).

Heavy metals	in mg per kg
Cd (Cadmium)	1 mg/kg dm
Cr (Chromium)	50 mg/kg dm
Cu (Copper)	90 mg/kg dm
Hg (Mercury)	0.3 mg/kg dm
Ni (Nickel)	20 mg/kg dm
Pb (Lead)	100 mg/kg dm
Zn (Zinc)	290 mg/kg dm
As (Arsenic)	15 mg/kg dm

Table 4 Maximum values for heavy metals in very clean compost per kg of dry matter (dm).

Heavy metals	in mg per kg
Cd (Cadmium)	0.7 mg/kg dm
Cr (Chromium)	50 mg/kg dm
Cu (Copper)	40 mg/kg dm
Hg (Mercury)	0.2 mg/kg dm
Ni (Nickel)	10 mg/kg dm
Pb (Lead)	65 mg/kg dm
Zn (Zinc)	110 mg/kg dm
As (Arsenic)	5 mg/kg dm

Table 5 Maximum permitted soil contamination and the quality standard, calculated on that basis, per kg of the relevant beneficial component for organic micro-pollutants.

	Maximum permitted soil contamination (g/ha/yr)	Quality standard (test standards in mg per kg of the relevant beneficial component)				
		phosphate	nitrogen	potash	neutralising value	organic substance
Σ PCDD/PCDF	0.00152	0.019	0.015	0.010	0.0038	0.00051
α-HCH	24.8	310	248	165	62	8.3
βHCH	0.96	12	9.6	6.4	2.4	0.32
γ HCH (lindane)	0.096	1.2	0.96	0.64	0.24	0.032
HCB	3.12	31	31.2	20.8	7.8	1.0
Aldrin	0.56	7	5.6	3.7	1.4	0.2
Dieldrin	0.56	7	5.6	3.7	1.4	0.2
Σ aldrin/dieldrin	0.56	7	5.6	3.7	1.4	0.2
Endrin	0.56	7	5.6	3.7	1.4	0.2
Isodrin	0.56	7	5.6	3.7	1.4	0.2
S endrin/isodrin	0.56	7	5.6	3.7	1.4	0.2
S DDT + DDD + DDE	1.84	23	18.4	12.3	4.6	0.6
PCB 28	1.48	18.5	14.8	9.9	3.7	0.48
PCB 52	1.48	18.5	14.8	9.9	3.7	0.48
PCB 101	6	75	60	40	15	2
PCB 118	6	75	60	40	15	2
PCB 138	6	75	60	40	15	2
PCB 153	6	75	60	40	15	2
PCB 180	6	75	60	40	15	2
Σ 6-PCB (excl. PCB-118)	30	375	300	200	75	10
Naphthalene	48	600	480	240	120	16
Phenanthrene	60	750	600	400	150	20
Anthracene	48	600	480	320	120	16
Fluoranthene	14.8	185	148	98	37	4.9
Benzo(a)anthracene	18.4	230	184	123	46	6.1
Chrysene	18.4	230	184	123	46	6.1
Benzo(k)fluoranthene	21.6	270	216	144	54	7.2
Benzo(a)pyrene	23.2	290	232	155	58	7.7
Benzo(ghi)perylene	16.8	210	168	112	42	5.6
Indeno(1,2,3-c,d)pyrene	18.8	235	188	125	47	6.3
Σ 10 Polycyclic aromatic hydrocarbons	920	11500	9200	6133	2300	307
Mineral oil	74800	935000	748000	498668	187000	24933

Annex B

Test values for the soil when using sewage sludge or compost

Cd (Cadmium)	maximum 0.4 + 0.007 (L + 3H) mg/kg dm
Cr (Chromium)	maximum 50 + 2 L mg/kg dm
Cu (Copper)	maximum 15 + 0.6 (L + H) mg/kg dm
Hg (Mercury)	maximum 0.2 + 0.0017 (2 L + H) mg/kg dm
Ni (Nickel)	maximum 10 + L mg/kg dm
Pb (Lead)	maximum 50 + L + H mg/kg dm
Zn (Zinc)	maximum 50 + 1.5 (2 L + H) mg/kg dm
As (Arsenic)	maximum 15 + 0.4 (L + H) mg/kg dm

L = % Lutum
H = % organic substance

Explanatory notes

Section 1 Introduction

The purport of this Decree is to transfer the rules, based on the 1947 Fertiliser Act, on the trade in fertiliser and the quality requirements for sewage sludge and compost, from the Decree on the quality and use of other organic fertiliser to the Decree implementing the Fertiliser Act (hereinafter: Implementing Decree). The dosage standards and spreading provisions for sewage sludge and compost, included in the Decree on the quality and use of other organic fertiliser, will also be transferred to the Decree on the use of fertiliser.

The transfer is part of the simplification of legislation on fertiliser, announced in the so-called package letter of 8 April 2004 of the Minister for Agriculture, Nature and Food Quality (Parliamentary documents II 2003/04, 29515, No 2). This simplification takes a wholesale approach in respect of fertiliser, and intends to reduce the burden of rules and implementation to a minimum. Against this backdrop, the existing rules have been assessed for need, proportionality, effectiveness, implementability and enforceability, and thought has been given to which rules can be combined or deleted. In order to attain the best possible transparent system for the trade in fertiliser, the quality rules on the trade in fertiliser have been integrated in the Implementing Decree. The implementing rules to be drafted in more detail by ministerial regulation will be included in the Regulation implementing the Fertiliser Act, for which Chapter 2 has been set aside. The user rules for fertiliser will be transferred to the Decree on the use of fertiliser. As a result, all spreading provisions for fertiliser, based on the Soil Protection Act, will be integrated into the Decree on the use of fertiliser.

This Decree, insofar as it concerns the change to the Implementing Decree, is based on Articles 4, 15, 34, 35, 36 and 37 of the Fertiliser Act. The change to the Decree on the use of fertiliser is based on Articles 6, 7, 11, 15, 17, 65, 91 and 92 of the Soil Protection Act. The 1947 Fertiliser Act, the Decree on the quality and use of other organic fertiliser and the legislation based thereon will lapse. The annex to these explanatory notes contains a transposition table of the provisions transferred to the Implementing Decree and the Decree on the use of fertiliser.

In addition, during the transfer of the regulations from the old Fertiliser Act, the test framework was used that was developed by the Taskforce for the Simplification of Licences and propagated in the Cabinet's opinion of 9 September 2005 on 'Licensing simplified' of this taskforce (Parliamentary documents II 2004/05, 29 515, No 93). This has led to the previous licensing scheme for fertiliser, where possible and justified with a view to protecting the environment, having been changed to generic regulations.

In the sequel to these explanatory notes, more detail is given about the background of the transfer (Section 2), the scheme of the trade in fertiliser (Section 3) and the relationship with waste substances legislation (Section 4). This is followed by the use of fertiliser (Section 5). Next are the effects on industry, the administrative burden and the environmental effects (Section 6), the implementation and enforcement (Section 7), the social comments round (Section

8), as well as notification (Section 9). Finally, the Decree is elaborated upon according to articles and sub-sections (Section 10).

Section 2 Background

The trade in fertiliser was regulated in the 1947 Fertiliser Act and the following regulations based thereon:
- 1977 Fertiliser Decree
- 1977 Fertiliser Decision
- Decision on methods of analysis for fertiliser 1979
- Decision on the sampling method for fertiliser
- Exemption decision with regard to the prohibitive provisions for fertiliser
- Decision on special exemptions for fertiliser

The objective of the Act was to guarantee fair trade in fertiliser, so as to protect the user against inadequate fertiliser. In the framework of this act, it was only possible to trade in licensed fertiliser. The 1977 Fertiliser Decision contained to that effect an extremely detailed list of approximately 240 licensed fertilisers, together with their accompanying type designation, description and agricultural quality requirements. With regard to fertiliser that did not feature on the list, if its fertilising value had been demonstrated, it was possible to grant an exemption from the ban to trade in the same. The purport of the scheme of the 1947 Fertiliser Act was also to implement four EC directives[2].

In addition, pursuant to the Decree on the quality and use of other organic fertiliser, there was a ban on the trade in sewage sludge, compost or heavy soil if the composition requirements with regard to the heavy metal content included in that Decree had not been met. As a result, in respect of sewage sludge, Directive 86/278/EEC[3] was implemented (hereinafter: Sewage Sludge Directive).

Apart from the guiding principles, included in Section 1, with regard to the simplification of legislation and simplified licensing, there are a number of other developments that affect the way in which the transfer from the system of the 1947 Fertiliser Act and the Decree on the quality and use of other organic fertiliser has taken shape.

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[2] Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilizers (OJEC L 24), Commission Directive 77/535/EEC of 22 June 1977 on the approximation of the laws of the Member States relating to methods of sampling and analysis for fertilizers (OJEC L 213), Council Directive 80/876/EEC of 15 July 1980 on the approximation of the laws of the Member States relating to straight ammonium nitrate fertilizers of high nitrogen content (OJEC L 250) and Commission Directive 87/94/EEC of 8 December 1986 on the approximation of the laws of the Member States relating to procedures for the control of characteristics of, limits for and resistance to detonation of straight ammonium nitrate fertilizers of high nitrogen content (OJEC L 38)

[3] Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJEC L 181)

The old system was mainly geared towards the agricultural quality of fertiliser with a view to protecting the consumer. Against this background, the only fertiliser that was licensed for trading was that which had been individually tested for their agricultural effect. In this respect, the ultimate consequences of products that were, in themselves, perfectly sound as fertiliser for environmental quality, particularly the quality of the soil, were not a test criterion on their own. As a result, heavy metals and organic micro-pollutants could not be prevented from building up in the soil. With a view to the quality of soil and groundwater, the then Minister for Agriculture, Nature Management and Fisheries undertook, by letter of 2 May 1997 to the Lower Chamber, to introduce an environmental test for the licensing of fertiliser, in a bid to exclude the most polluted fertiliser (Appendix to Proceedings II 1996/97, No 1160). Since the 1947 Fertiliser Act did not provide an adequate basis for an environmental test, it was the intention not to introduce the environmental test in respect of the licensing of fertiliser until the system from the 1947 Fertiliser Act was transferred to the Fertiliser Act. After all, Article 4 of the Fertiliser Act provides for the basis to regulate the trade in fertiliser in the interest of soil protection.
Moreover, the introduction of an environmental test also fits into the necessary measures which Member States, pursuant to the so-called Framework Directive on Water[4] must take in order to limit the indirect discharges of the polluting substances mentioned in the annex to that directive (including metals, arsenic, phosphates and nitrates).
These measures, partly based on the precautionary principle, require the substances in question, with a view to sustainable use of water and soil, to be regulated as early as at the stage of trading.

The Decree on the quality and use of other organic fertiliser was also assessed in 1998. The findings of the assessment of the Decree on the quality and use of other organic fertiliser, along with the policy adopted in that respect, were sent to the Lower Chamber by letter of 13 May 1998 (Parliamentary documents II, 1997/98, 18 225, No 67). According to the assessment, the Decree on the quality and use of other organic fertiliser met the main objective, namely to reduce the level of soil contamination by heavy metals originating from sewage sludge and compost. Further to the assessment, recommendations were made with regard to the monitoring and enforcement of the Decree on the quality and use of other organic fertiliser and with regard to the quality standards for organic micro-pollutants. In the aforementioned letter, it was explained that any tightening of the quality standards involving organic micro-pollutants did not only confine itself to sewage sludge and compost and should therefore need to be considered within the contaminants policy for fertiliser as a whole. Under reference to the previously mentioned letter of 2 May 1997, it was indicated that any tightening would be included in the environmental test to be developed.

Finally, the aforementioned directives on the intra-Community movement of inorganic fertiliser have been repealed. The intra-Community movement is

[4] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJEC L 327)

currently regulated by Regulation (EC) No 2003/2003[5] (hereinafter: Fertiliser Regulation). This Regulation provides for regulations which mainly pertain to the composition and description of the types of fertiliser, the type indication, identification, packaging, traceability and the labelling of inorganic fertiliser.

Against the above-mentioned backgrounds, a number of implementing variants have been considered for the transfer of the 1947 Fertiliser Act and the Decree on the quality and use of other organic fertiliser to the Fertiliser Act and the Decree on the use of fertiliser. In terms of legislative pressure and implementing burden, these variants ranged from complete liberalisation, by scrapping national rules on licensing and the composition of fertiliser, over the drafting of generic quality regulations for fertiliser to be traded, to a licensing scheme whereby fertiliser would be subject to both agricultural and environmental tests. The then Assessment Centre of the Ministry of Agriculture, Nature and Food Quality carried out a quick scan into the different variants (Transfer of the 1947 Fertiliser Act to the Fertiliser Act, Assessment Centre LNV, July 2004, No 303V). The different variants were assessed in terms of their impact on industry, human and animal health, crops, the environment, their implementability and enforceability and in terms of their administrative burden.

The assessment showed that doing away with the national rules on the licensing and composition of fertiliser altogether and thus restricting legislation only to the provisions necessary for the implementation of the Fertiliser Regulation is not realistic. Granting an insight into the composition and the form of compulsory labelling was considered minimal in order to restrict the risk of environmental damage. The impact assessment also showed that the drafting of generic regulations without subjecting these to the waste substances regime – which is further detailed in Section 4 – would lead to an unbridled stream of residues and waste substances being sold in agriculture, which would entail potential risks for the environment, plants and animals. It was expected that this threat would particularly manifest itself in respect of those products that have little or no fertilising value but where – due to the subsidies granted – the willingness to purchase is considerable. After all, by cutting down on processing costs, it is much cheaper for the manufacturer to sell those waste substances as fertiliser. This mainly concerns industrial organic waste from, *inter alia*, the food and tobacco industry and the animal food industry. Since there was reason to believe that the stream would be substantial, additional studies were carried out into the extent of the use of these waste substances in agriculture and into the effects of this on man, the environment and crops (Residual flows from the food and tobacco industry, research into the application of organic residual flows as fertiliser in agriculture, Grontmij, November 2004). The Inspectorate of the Ministry of Health, Planning and the Environment has carried out (chain) studies into organic sludges, which can partly be used as fertiliser. The above studies shave shown that residual flows from the food and tobacco industry account for approximately 12.1 million tonnes annually. Approximately 0.75 million tonnes of this were, under the 1947 Fertiliser Act, sold as licensed fertiliser in agriculture. It was anticipated that without further measures, the residual stream

[5] Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (PbEU L 304)

towards agriculture would increase to approximately 4 million tonnes. The content level of unwanted pollutants in a section of the organic residual stream appeared so high that in many cases, only very low dosages would be permitted on agricultural land. The application as fertiliser of these streams does not fit into the stand-still principle with regard to heavy metals in the soil. Whilst no great risks were anticipated in the short term, adverse effects in the long term along with calamities were not ruled out. It would therefore, from an environmental point of view, be necessary to regulate the use of those substances, where provision should be made for an extensive range of dosage regulations. An adequate enforcement of such regulations is, however – given the fact that it is virtually impossible to detect the infringement of dosage regulations other than by physical inspections – virtually impossible, as a result of which environmental risks continue to exist. In this connection, it is vital to regulate the licensing of such fertiliser as early as at the trading stage, whereby provision is made for preliminary tests of residual flows which may be used as fertiliser.

Section 3 Trading in fertiliser

In the new system, the standards with regard to trading in fertiliser have been set up in such a way as to ensure that the focus is on the trader's accountability for the traded fertiliser. For this purpose, Article 4, first paragraph, of the Implementing Decree has issued a general ban on the trade in fertiliser, which, pursuant to the second paragraph of Article 4, does not apply if, with regard to the fertiliser, the generic provisions specified in that paragraph have been met. If it has been established that fertiliser has been traded, it is first and foremost up to the trader of this fertiliser, so as to avoid any penalties, to refer to compliance with the standards for lifting the ban, referred to in the second paragraph of Article 4, and also to provide evidence to that effect. If he fails to do this, the ban will apply in full and he will be punishable on account of infringing the ban on trading in fertiliser. This method of setting standards has also been used in the set of standards pertaining to the use of fertiliser included in Chapter III of the Fertiliser Act and in the Decree on the use of fertiliser with regard to the use of fertiliser.

The generic regulations referred to in Article 4, second paragraph, particularly pertain to the general requirements for fertiliser, included in Articles 5 to 7, the requirements with regard to the agricultural effect included in Articles 8 to 12, the environmental requirements included in Articles 13 to 15 and the packaging and labelling requirements included in Articles 18 and 19. In addition, the implementing regulations to be prescribed by ministerial regulation pursuant to Article 21 also apply. Although the requirements are, insofar as possible, the same for all categories of fertiliser, there are also categories of fertiliser whose specific composition and risks for the environment require more specific regulations. This is particularly the case for other organic fertiliser, sewage sludge and compost.

In concrete terms, this means that the list of licensed fertiliser used previously, with a definition and detailed description of the agricultural requirements for each type of fertiliser has now lapsed. In this connection, it is at the end of the day up to the user of fertiliser, based on the instructions for use accompanying the

fertiliser, as well as the information provided on the packaging or on the document accompanying the fertiliser, to assess the suitability of the product in their situation.

As aforementioned, the general requirements with regard to the trade in fertiliser have been included in Articles 5 to 7. Article 5 provides for the use of residual flows of waste substances as fertiliser or in the production of fertiliser. In this connection, residual flows do not only comprise traces, residues and surpluses, but also additional flows that are released during a production process. These additional flows represent a lower economic value or have an application that is lower in value than the product on which the process is primarily focused. As explained at the end of Section 2, in the new system, residual flows of waste substances, in respect of which it has been demonstrated that, from an environmental or agricultural point of view, there are no objections to these being traded (and hence ultimately used) as fertiliser, pursuant to Article 5, second paragraph, can be placed on a positive list by the Minister for Agriculture, Nature and Food Quality. This may involve categories of waste substances, specific waste substances or end products of a certain processing procedure, in which respect requirements can also be prescribed for the starting materials, such as so-called co-fermentation materials which may be fermented along with animal fertiliser.

As indicated in Section 1, the system of exemptions, in respect of which a temporary exemption is granted to a manufacturer or trader for residual flows of waste substances from the ban on trading in fertiliser, has lapsed. With regard to residual flows of waste substances which, on the basis of the old Fertiliser Act, can still be traded, a transitional period has been provided for in Article 77 of the Implementing Decree. This transitional regime is fleshed out further by ministerial regulation and will last for at least one year and no more than three.

The general requirements included in Article 6 relate to the suitability criterion in the definition of the term ‘fertiliser’ of Article 1, first paragraph, sub-section d, of the Fertiliser Act, on the basis of which fertiliser as such must be able to serve the purpose of turning the soil into a suitable growth medium or improve it as a nutrient medium for plants. As explained in the explanatory notes to the proposal of the Fertiliser Act (Parliamentary documents II, 1983/84, 18 271, No 3), this means that fertiliser must have a certain fertilising value. This fertilising value is mainly responsible for supplying plants or parts of plants with food in the form of primary or secondary nutrients or micro-nutrients, for improving the fertility of the soil by supplying organic substance or by maintaining or reducing the acidity level in the soil. Products that do not have those characteristics, such as wind erosion products, are not fertiliser and can therefore not be traded as such. The trade in these substances is, insofar as they, given the circumstances, cannot be designated as waste substances, not regulated. Moreover, it should be noted that in the situation where those products do have fertilising value – and are therefore apparently intended for use as fertiliser – but are nevertheless traded under the blanket term of wind erosion product or similar, the trade in those products is, pursuant to Article 5 of the Fertiliser Act, prohibited.

Article 7, first paragraph, also provides for the option of laying down more detailed rules by ministerial regulation with regard to mixing fertiliser. Further legislation may be needed in this connection, for example, to avoid certain fertilisers having an adverse effect on each other when mixed. If the physical nature of the component parts is unequal, there is also the risk of the mixture separating. This may, when those mixtures are used, lead to an unwanted agricultural effect and in some cases even to phyto-toxicity. As a result of separation, the mixture, when used, will spread unevenly over the parcel of land, as a result of which parts of the crop will receive excess concentration levels of micro-nutrients, in particular, which means that they become unsuitable for consumption.

In addition to the general requirements, there are also agricultural and environmental requirements that apply per category of fertiliser. In the Decree, the following categories are identified for this purpose:

- other inorganic fertiliser
- lime fertiliser
- other organic fertiliser
- sewage sludge and
- compost

Other inorganic fertiliser is inorganic fertiliser that does not belong to the type of fertiliser mentioned in Annex I to the Fertiliser Regulation. Fertiliser that does belong to one of the types of fertilisers mentioned in that annex must, pursuant to Article 8, meet the regulations laid down by, or pursuant to, that Regulation. Consequently, this fertiliser can, pursuant to the Fertiliser Regulation, be traded under the banner of “EC fertiliser”. This also includes fertiliser on the basis of ammonium nitrate with a high nitrogen content. Ammonium nitrate is the main substance of a series of products, some of which are used as fertiliser while other are used as explosives. Since some of those products can be dangerous, and can, in certain cases, be used for purposes other than for which they were intended, the safety of people and goods can be put at risk. In view of this, fertiliser of this type is subject to additional regulations pursuant to the Fertiliser Regulation, on the basis of which it must have certain characteristics in order to guarantee that it cannot cause any danger. For this purpose, such fertiliser, before it is traded, must undergo a detonation test.

For a number of fertilisers belonging to the category of other inorganic fertiliser, agreements have been concluded at BENELUX level. The others are, in fact, fertilisers made from residual flows or waste flows which the Minister for Agriculture, Nature and Food Quality can place on a positive list. These other inorganic substances must meet agricultural requirements that are included in Article 9. These requirements cover the minimal agricultural effect which fertilisers must have, which is at least five weight percentages of the dry matter for the primary nutrients nitrogen, phosphate and potash. The minimal effect for secondary nutrients or micro-nutrients will be laid down by ministerial regulation.

Lime fertiliser must meet the agricultural requirement included in Article 10 that its neutralising value must be at least 25 on the basis of dry matter.

Other organic fertiliser is organic fertiliser with the exception of animal fertiliser, compost and sewage sludge. The name of this category of fertiliser therefore differs from what was understood by it in the Decree on the quality and use of other organic fertiliser. After all, this name used to be reserved for compost, sewage sludge and black soil. In many cases, other organic fertiliser is currently, in fact, fertiliser made from residual flows or waste flows which the Minister for Agriculture, Nature and Food Quality has placed on a positive list.
With regard to this category, the product must have the minimal agricultural effect included in Articles 11 and 12. This means for fertiliser whose main aim is to supply organic substance, that this must contain at least 20 weight percentages of organic substance of the dry matter. Fertiliser whose main aim is to supply primary nutrients must contain a minimum of five weight percentages of nitrogen, phosphate or potash of the dry matter. As is the case for other inorganic fertiliser, the minimal effect for secondary nutrients or micro-nutrients will be laid down by ministerial regulation.

The environmental requirements for the different categories of fertiliser are included in Articles 13 to 15. Article 13 mainly provides for the maximum size of the parts in other organic fertiliser and for its maximum permitted contamination level. Pursuant to Article 14, inorganic fertiliser, other organic fertiliser, lime fertiliser and substances designated pursuant to Article 5, second paragraph, are subject to generic requirements with regard to the quantity of heavy metals. Pursuant to Article 15, other organic fertiliser, lime fertiliser and substances designated pursuant to Article 5, second paragraph, are also subject to the maximum values for organic micro-pollutants. The requirements prescribed on the basis of Articles 14 and 15 pertain to the minimum package for heavy metals, where the maximum soil contamination which also applies to sewage sludge, and organic pollutants, such as mineral oils, PCBs and dioxins, has been used as a basis. As is further elaborated upon in Section 6.3, these maximum composition requirements are based on the maximum acceptable soil contamination. With regard to all fertilisers that contain nitrogen or phosphate, the contamination of the soil with pollutants is limited thanks to the standards for using nitrogen and phosphate. Based on maximum acceptable soil contamination involving polluting substances, this contamination, thanks to the standards for using nitrogen and phosphate, can be converted into composition requirements expressed in mg per kg of nitrogen and phosphate, respectively. With regard to fertiliser that does not contain any nitrogen or phosphate, the use is not limited by the standards for using nitrogen and phosphate. In the case of this fertiliser, maximum permissible micro-pollutants are expressed per kg of potash, per kg of neutralising value or per kg of organic substance. This presupposes a level of use of 150 kg of potash, 400 kg of neutralising value or 3 000 kg of organic substance per hectare.

Articles 16 and 17 cover the agricultural and environmental requirements for sewage sludge and compost. The requirements for sewage sludge are based on Articles 4, 5 and 9 of the Sewage Sludge Directive. The provisions from the Decree on the quality and use of other organic fertiliser, whose purport was to implement this directive, and which pertain to the minimum package for heavy metals, have been adopted in the Implementing Decree in full. In order to ascertain whether the composition requirements included in Annex II, under Table 2, to the Implementing Decree have been met, the sludge must be sampled

and analysed in accordance with Article 9 of the directive. Article 21, first paragraph, sub-section d, provides for the basis for laying down regulations by ministerial regulation in this respect. Similarly, the quality requirements for compost have been transferred virtually intact from the Decree on the quality and use of other organic fertiliser. As announced in the letter of the State Secretary for Health, Planning and the Environment of 28 April 2005 (Parliamentary documents II 2004/05, 29 930, No 10), the standards for zinc and copper for compost have been extended by a factor of 1.43, though, as a result of which the zinc standards for compost and very clean compost now stand at 290 and 110 mg/kg, respectively, and the standardisation for copper is now 90 and 40 mg/kg, respectively. This extension of the standards corresponds to the margin that was used when these standards were enforced. As is further elucidated in Section 6.3, this enforcement factor is deleted, as a result of which the permitted composition is not changed as such in this respect.
Furthermore, compost may not contain any biologically degradable parts with diameters in excess of 50 mm and not more than 0.5 weight percentage of non-soil-based, non-biologically degradable parts

In time, it will be examined whether the environmental requirements must be tightened, with maximum values for organic micro-pollutants as these already apply to other organic fertiliser. Moreover, it is noted that, pursuant to the Regulation, animal by-products[6] with regard to pathogens in vegetable, fruit and garden compost are subject to strict requirements.

With regard to the requirements included in Article 19 in respect of labelling, it is important, among others, for the application of all fertiliser used by the farmer to comply with the standards for using nitrogen and phosphate. This means that a customer of all fertilisers must know the content levels of nitrogen and phosphate in the product. That is why each delivery or batch must be accompanied with a document which must contain the following information: the designation fertiliser, the type of fertiliser, the company name and the manufacturer's address, the weight or volume and the content levels of nitrogen and phosphate. This document is, with regard to animal fertiliser, sewage sludge, compost and other organic fertiliser designated by ministerial regulation, proof of transport and with regard to other fertiliser, a label or other document. By ministerial regulation, more detailed regulations may be laid down with regard to the designations prescribed by the Decree. These may pertain to the permitted tolerance levels in respect of the quantity of minerals in the fertiliser.
In the case of mixtures, it must be indicated what fertilisers these contain, according to which ratio they have been mixed and what the beneficial components for each of the fertilisers are. In order to counter the non-judicious use of fertiliser, it must also be accompanied with instructions for use. By providing information about the suitability of the fertiliser for the cultivation of certain crops or by observing certain dosages, this can help prevent negative effects of the use of fertiliser. Pursuant to Article 21 of the Implementing Decree, more detailed rules can be prescribed with regard to the instructions for use.

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[6] Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJEC L 273)

Unprocessed animal fertiliser and EC fertiliser are exempt from the regulations on trading. Growth media are also exempt. Pursuant to Article 1, first paragraph, sub-section b, of the Fertiliser Act, this is material in solid or liquid form, not being soil, that is used, or is intended for use, as a growth medium for plants. Since these products, through their nature, are not intended for being added to the soil, there is no reason from an environmental point of view to regulate the trade in those products.

Legislation on trading in, including the storage and transport, as well as the use of, animal fertiliser has, since 1 January 2006, been included in the Fertiliser Act as part of the implementation of the European Nitrate Directive. With regard to the use of animal manure, the spreading provisions from the Decree on the use of fertiliser will also apply.

The trade in EC fertiliser is fully regulated by the Fertiliser Regulation. This Regulation applies to products that are brought into circulation as fertiliser with the designation “EC fertiliser” and directly imposes regulations on their manufacturers in terms of composition, identification, traceability and labelling. The Regulation comprises approximately 110 type designations, and more than 90% of artificial fertiliser is traded in accordance with this Regulation. Member States may not prohibit, limit or hinder the introduction onto the market of an “EC fertiliser” which complies with the Regulation for reasons that are related to composition, identification, labelling or packaging. The provisions necessary for the implementation of this Regulation, including the carrying out of checks to verify whether EC fertiliser meets the regulations of the Regulation and the recognition of laboratories that carry out the checks will be laid down by ministerial regulation. Article 40, second paragraph, of the Fertiliser Act offers the basis for this purpose.

Section 4 Relationship with waste substances legislation

Legislation on the basis of the Fertiliser Act impacts on the applicability of the waste substances chapter in the Environmental Management Act. According to Article 22.1, fourth paragraph, of the latter Act, Chapter 10, which comprises the waste substances regime, does not apply to behaviour, regulated on the basis of the Fertiliser Act, unless the opposite appears to be the case from legislation based on the Fertiliser Act. This harmonisation between regimes did not apply to behaviour that was regulated on the basis of the 1947 Fertiliser Act. As a result, the risk, outlined in Section 2, that waste substances may be withdrawn from the scope of the Environmental Management Act on account of their being pseudo-fertiliser, may well become a reality. In order to ensure that these substances remain within the scope of the Environmental Management Act, provision has been made for drawing a distinction between the waste substances regime in the Environmental Management Act and the system on the trade in fertiliser on the basis of the Fertiliser Act.

The above distinction has been incorporated in the Implementing Decree as follows: In principle, residual flows of waste substances may, pursuant to Article 5, first paragraph, of the Implementing Decree not be traded as fertiliser or used

as an ingredient in the production of fertiliser. The key criterion in the question whether a substance is a waste substance, is the question whether the holder (the producer or the natural or legal entity who is in possession of the waste substances) will discard these substances, or intends, or is forced, to do the same. This criterion is explained at great length in case law of the European Court of Justice and, in line with that Court, by the Council of State's Dutch Administrative Jurisprudence. Whether or not, in a specific case, a substance can actually be designated as a waste substance will depend on the specific circumstances of that case.

Organic fertiliser, sewage sludge and compost, which are already being used in agriculture on a large scale, form an exception to the rule. These may, provided they meet the composition requirements, be traded. In addition, pursuant to the second paragraph of Article 5, waste substances and residues, in respect of which it has been demonstrated that there are no environmental or agricultural objections to these being traded as fertiliser (and therefore also eventually being used as the same) or in respect of which it has been established that they can be used as an ingredient for fertiliser without any objections, are also exempt. These substances are, following verification, included in a positive list by the Minister for Agriculture, Nature and Food Quality. This list may comprise categories of waste substances, specific waste substances and end products of a specific processing procedure, possibly in combination with requirements in respect of starting materials. Fertilisers produced in this way fall within the category of other organic or other inorganic fertiliser, and this fertiliser may be traded, provided that the provisions referred to in Article 4, second paragraph, have been met.

Substances that are not on the positive list or fertiliser that has been produced using substances that are not included on the list shall remain subject to the regime of the Environmental Management Act. In addition, waste substances that are included on the positive list but fail to meet the composition requirements included in Chapter II of the Implementing Decree, will also be subject to the waste substances regime of the Environmental Management Act. The same applies to sewage sludge and compost that fails to meet the composition requirements of the Implementing Decree. In this connection, Article 4, fourth paragraph, explicitly states that Chapter 10 of the Environmental Management Act applies to products that are made from waste substances, either wholly or in part, insofar as those products fail to meet the rules referred to in the second paragraph of Article 5. In view of the definition of the term 'fertiliser' of Article 1, first paragraph, sub-section d, of the Fertiliser Act, if waste substances that have been included in the positive list are not actually given the useful purpose of fertiliser, they will once again be relegated to the category of waste substance. In principle, pursuant to Article 10.2 of the Environmental Management Act, waste substances are subject to the ban on taking these outside of establishments 'or introducing them onto or into the soil in another way'.

Moreover, the above does prejudice the fact that the regulations in the Environmental Management Act that pertain to the section of the waste chain that precedes the application of waste substances as fertiliser, continue to apply in full. This particularly concerns the phase that precedes trading, for example the

applicability of the regulations from the Environmental Management Act on establishments where the substances in question are produced.

Section 5 The use of fertiliser

In this section, we turn our attention to the usage regulations as they now read, having transferred the system from the 1947 Fertiliser Act to the Fertiliser Act and as a result of transferring the usage regulations from the Decree on the quality and use of other organic fertiliser to the Decree on the use of fertiliser, on the basis of the Decree on the use of fertiliser.

First of all, pursuant to Article 1a of the Decree on the use of fertiliser, there is a general ban on the use of fertiliser if this fertiliser fails to meet the requirements prescribed by, or pursuant to, Chapter III of the Implementing Decree or if its use contravenes the usage instructions for the relevant fertiliser. The aim of this ban is to ensure that only the fertiliser that can be traded pursuant to Article 4 of the Implementing Decree can actually be used as fertiliser. The use of compost made from the farm's own waste substances is exempt from this ban. After all, since this type of compost is, by its very nature, not traded, the composition requirements included in Chapter III of the Implementing Decree in respect of this product do not apply.

In addition, a new section has been included in the Decree on the use of fertiliser which contains the dosage regulations on the use of sewage sludge, compost and other organic fertiliser. In this section, the content of the dosage regulations as these were included in Sections 1 to 4 of Chapter 3, and as prescribed in the Decree on the quality and use of other organic fertiliser to protect the soil, on the subject of the use of sewage sludge and compost, has been transferred virtually intact. This section also comprises the rules for using other organic fertiliser. This opportunity was seized in an attempt to regroup the regulations for the benefit of clarity. Accordingly, the dosage regulations on sewage sludge and other organic fertiliser are included in Article 1b. In addition, with regard to the use of sewage sludge, Article 1c now contains the condition that the parcel to be fertilised must first be sampled and analysed. Subsequently, the purport of Article 1d is to implement Article 7 of the Sewage Sludge Directive and provides for a ban on the use of sewage sludge or other organic fertiliser or a mixture thereof in times of grazing and prior to the cultivation of feed crops, or the growth and harvest of vegetables and fruit.

The dosage regulations for compost on agricultural land, other land or nature areas are included in Articles 1e and 1f.

In addition, with regard to the dosage regulations for sewage sludge and compost, a number of changes have been made that result from the assessment of the Decree on the quality and use of other organic fertiliser mentioned in Section 2 of these explanatory notes.

The regulations included in Sections 5 and 6 of Chapter 3 of the Decree on the quality and use of other organic fertiliser and intended to regulate the use of fertiliser in accordance with good agricultural practice and taking into

consideration, *inter alia*, soil conditions, type of soil, climate conditions, precipitation and irrigation, and regulations with regard to the use of fertiliser on steep slopes and on wetland, frozen land or land covered in snow, have been integrated in the provisions of Sections 3 and 4 of the Decree on the use of fertiliser. With regard to animal fertiliser, these provisions were namely identical to the provisions that applied to compost and sewage sludge on the basis of the Decree on the quality and use of other organic fertiliser. The same applies to the scope for exemption included in Chapter 3, Section 7, of the Decree on the quality and use of other organic fertiliser. This is incorporated in the provisions of the same name, just as that with regard to animal fertiliser was included in Section 5 of the Decree on the use of fertiliser.

Section 5.1 Sewage sludge

Pursuant to Article 1b, third paragraph, of the Decree on the use of fertiliser, the use of sewage sludge is, only permitted on agricultural land. Its use is restricted by a maximum permitted dosage, expressed in tonnes of dry matter per hectare per year. A year shall be taken to mean a calendar year, as is also the case in fertiliser legislation as a whole. In the dosage regulation for sewage sludge, a distinction is drawn between the use on building land and on grassland. The permitted quantity on building land is double that on grassland. This is because building land is ploughed on a regular basis, as a result of which the substances are spread over a relatively thick upper layer (20 cm). This is much less the case with grassland; the substances added gather in a thin upper layer 5 to 10 cm thick with the result that undesirable effects may come about more quickly.

With regard to sewage sludge, a distinction is drawn between liquid and semi-solid sewage sludge. The dosage regulations for liquid sewage sludge apply per year. Given the more solid structure of semi-solid sewage sludge, which is related to a higher dry-matter content and the spreading equipment used in this respect, this type of sludge may be applied in a double quantity once every two years. The dosage standards for liquid and semi-solid sewage sludge have remained the same compared to the dosage standards in the Decree on the quality and use of other organic fertiliser.

In a bid to retain characteristic living communities in nature areas, attempts are made where possible to maintain the natural situation, without disrupting this by using other organic fertiliser. On other land, an absolute ban on the use of sewage sludge remains intact on account of the content of pathogenic organisms in sewage sludge.

Finally, sewage sludge may not be used on parcels, the analysis of soil samples of which has shown that the substances present in the soil exceed the test values included in Annex III to the Decree on the use of fertiliser.
With a view to sampling soil, Article 1c specifies that the use of sewage sludge is conditional upon the parcel to be fertilised being sampled and analysed first.

Section 5.2 Compost

Pursuant to Article 1e, it is permitted to use compost on agricultural land and other land. The use of those lands is, however, restricted by a maximum permitted dosage, which, compared to the Decree on the quality and use of other organic fertiliser has been extended. On those lands, compost can be used up to the maximum permitted quantity of six tonnes of dry matter per hectare per year, or 12 tonnes of dry matter per hectare per two years, or 30 tonnes of dry matter per hectare per five years. On grassland, the maximum quantity of dry matter is stipulated as being three tonnes per hectare per year, or six tonnes per hectare per two years, or 15 tonnes of dry matter per hectare per five years. The composting process ensures that the pathogenic organisms that are present in the compost die off. When the standard for using compost was established, due account was given to the basic contents of heavy metals that are supplied along with the soil present in the compost.

An extension also applies to the use of compost that is currently permitted on managed nature areas, provided that management is not subject to restrictions with regard to the quantity of compost used and the use is in agreement with this, or if the total of the quantity of compost used does not exceed the quantity specified in Article 1e, sixth paragraph, of the Decree on the use of fertiliser. Based on the term ‘animal fertiliser’ in the Nitrate Directive, as soon as a product contains animal fertiliser, to whatever extent this may be, this product as a whole will fall within the scope of the term ‘animal fertiliser’. This means that mixtures of sewage sludge or compost with animal fertiliser are to be considered animal fertiliser. It should also be noted that where the use of both sewage sludge or compost is standardised separately, this will also include mixtures of those substances.
The standard for using phosphate in compost on nature areas is aligned to the standard for animal fertiliser of the Decree on the use of fertiliser
It is also possible to use compost on other land as a one-off measure in a quantity of no more than 200 tonnes of dry matter per hectare, if this planned use has been notified to the Minister for Agriculture, Nature and Food Quality, which, in practice, will be the Regulations Division. Under the scope of the Decree on the quality and use of other organic fertiliser, this option was restricted to use for the benefit of creating or expanding a green area, a recreational area, a sports complex or a golf course, which is provided for by means of a plan as referred to in Articles 7 and 10 of the Physical Planning Act, or a Decree as referred to in Article 19 of that Act. The old provision also contained a number of detailed administrative regulations. Accordingly, a detailed description of the nature of the project and the planned schedule of when the project is to be implemented, had to be submitted. The information that is to be notified these days is restricted to the information that is necessary to ascertain that the delivery is actually done on a one-off basis.

Section 5.3 Other organic fertiliser
The use of other organic fertiliser, as is the case for sewage sludge, is only permitted on agricultural land.
Since with regard to composition requirements of other organic fertiliser, the maximum levels are expressed as mg of contamination per kg of phosphate and nitrogen, there are no separate dosage regulations for this fertiliser. After all, the dosage of other organic fertiliser is, as was explained in Section 3 of these

explanatory notes, directly related to the standards for using nitrogen and phosphate. The composition requirements of substances that contain too little in the way of phosphate or nitrogen are expressed per kg of potash, per kg of neutralising value or per kg of organic substance. This presupposes a level of use of 150 kg of potash, 400 kg of neutralising value or 3 000 kg of organic substance per hectare.
The provisions included in Sections 3 and 4 of the Decree on the use of fertiliser on the application of this fertiliser also apply, taking into consideration soil conditions, the type of soil, climate conditions, precipitation and irrigation, as do the regulations on the use of fertiliser on steep slopes and on wetlands, frozen land or land covered in snow.

Section 6 Effects on business, administrative burden and environmental effects

As indicated in Section 2, a quick scan has, in this respect, been carried out into the effects on business, the administrative burden and the effect on the environment. The effects on business, the administrative burden and the environmental effects that are related to the variant that is ultimately opted for, consisting of generic regulations and a licensing regime for waste substances and residual flows which are traded as fertiliser or are used in the production of fertiliser, are explained below.

Section 6.1 Effects on business
The effects on business compared to the current situation are negligible.
It is expected that the impact of the simplification of the trading system, compared to the current situation, except for the implications on the administrative burden, compared to the current system, will be minimal. This is also why reference is made to the quick scan mentioned in Section 2. This quick scan shows that, apart from very minimal legislation, there are virtually no effects on business. This is not the case. Legislation has been transferred and, where possible, simplified.
After all, on behalf of the manufacturers, and parties treating and processing compost and sewage sludge, the provisions from the Decree on the quality and use of other organic fertiliser have been transferred virtually in their entirety and, where possible, simplified. This mainly amounts to a reduction in the administrative obligations and the extension of standards.
The approximately 80 manufacturers of residual flows who, on the basis of an exemption granted pursuant the old Fertiliser Act, are still allowed to trade their products as fertiliser, could feel the effects in time. These products have, in the framework of the exemption scheme, been tested for agricultural effectiveness and for the question whether, in the case of intended use, standards as indicated in the informal environmental test are not exceeded. However, this environmental test was not part of the exemption scheme until 1998. With regard to a restricted number of products which were granted exemption before 1998 and which are still being used as fertiliser, it could well be that they are considered so polluting that they are not included in the positive list. A transitional regime has been provided for, though, which will be fleshed out by ministerial regulation, thus giving manufacturers of this group of residues ample time, should the situation arise, to look for different sales outlets.

Since the present amendment to the Implementing Decree does not provide for the trade in animal fertiliser or EC fertiliser, it is expected that there will be no changes in the effects on business for this group of manufacturers.

Section 6.2 Administrative burden
The transfer of the 1947 Fertiliser Act and the Decree on the quality and use of other organic fertiliser forms part of the simplification of legislation on fertiliser. This simplification takes a wholesale approach in respect of fertiliser, aiming to reduce the burden of rules and implementation to a minimum. The changed administrative burden of the proposed changes has been estimated. An educated guess tells us that the administrative burden will be reduced by approximately EUR 78 000 annually. More detailed provisions will be given on the basis of the further elaboration in the ministerial regulation.

The present change to the Decree does not provide for a change in the rules with regard to animal manure. There is therefore no effect on the administrative burden. EC fertiliser falls within the direct scope of the Fertiliser Regulation. Whilst this Regulation regulates the trade in inorganic fertiliser, in particular, the Decree prescribes no additional obligations.

With regard to sewage sludge and compost, the Ministries of Agriculture, Nature and Food Quality and Housing, Planning and the Environment have examined the administrative obligations and looked into ways of improving this process and its monitoring (lightening the burden) and of increasing the enforceability of the trade in, and use of, substances of this kind. This has culminated in the following changes.

Proof of delivery of compost and sewage sludge is replaced by a three-way attestation in the form of proof of transport. This means that in the case of transport by an intermediary, only one form, instead of two, needs to be completed. It is estimated that as a result, the number of forms will drop from 100 000 to approximately 60 000. This is based on the assumption that many of the compost and sewage sludge suppliers will submit their proof of transport electronically. The paper trail will not be retained unless this is deemed necessary. The time needed to get three parties to sign the proof of transport is compensated by the possibility to send the document digitally. Since most carriers already do so with regard to the proof of transport of animal manure, it is expected that many carriers will make use of this option. On balance, the time spent on this will remain the same therefore.

The register cards for sewage sludge and compost will also lapse. The information on analysis and the analysis number, which had to be included on those register cards before, must now be specified on the new proof of transport. This means that the manufacturers, as well as parties treating and processing, need not keep separate register cards or submit those to the local authorities (provinces). The annual provision of information by the provinces to the Ministries of Agriculture, Nature and Food Quality and of Housing, Planning and the Environment is currently generated by the Regulations Division on the basis of proofs of transport that are submitted. This information is used by those

divisions for the benefit of reports that are to be drafted in the framework of the Sewage Sludge Directive on behalf of the European Commission.

The administrative rules for the one-off delivery of a batch of compost of 200 tonnes per hectare or other land will be simplified. Moreover, this option is only used very rarely.

Under the old regime, with regard to sewage sludge and compost, as soon as the qualifications for sewage sludge or compost as fertiliser were met on the basis of the analysis results, notification of delivery had to be done to the National Waste Substances Reporting Point. This notification is based on the Decree on the notification of industrial waste substances and dangerous waste substances. Moreover, this same flow had to be justified administratively to the Regulations Division by sending proof of delivery. Notification of delivery to the National Waste Substances Reporting Point has lapsed and the information prescribed is now provided by Regulations Division to the National Waste Substances Reporting Point. This translates into a considerable reduction in the burden for the sector.

Furthermore, the frequency of the prescribed soil sampling and analysis prior to the use of sewage sludge (which in the past, had to take place once every six years) is now restricted to recording the situation at the outset for land where sewage sludge will be used. The requirement to sample the soil periodically prior to the use of sewage sludge has now lapsed.

Under the 1947 Fertiliser Act regime, in order to obtain exemption, the effect and applicability of the fertiliser had to be subjected to thorough examination and its components had to be analysed. This involved some 20 requests annually, in respect of which an analysis of components and active ingredients amounted to approx. EUR 2 500 per request. The costs of the examination varied for each request. This system of exemptions has now lapsed. This has been replaced by a positive list, as laid down by ministerial regulation, of waste substances which can be processed and used as fertiliser. This constitutes a reduction in the administrative burden for the manufacturers of fertiliser.
By ministerial regulation, more detailed requirements can be prescribed for the way in which the presence of heavy metals, the beneficial components, the organic substance, the organic micro-pollutants and the more detailed composition of fertiliser is established. At the same time, more detailed requirements can be prescribed with regard to label content. The prescribed frequency of sampling and analysing other organic fertiliser can vary from simply inspection sampling by the government to sampling and analysis every delivery. From an administrative burden of virtually zero to a considerable cost item. When the frequency is established, the benefits and need are looked into, as well as the implications for the administrative burden. The fact that the flow of fertiliser is relatively small will also be factored in. At the moment, some 80 companies are exempt from using residual flows as fertiliser. The quantity of batches per fertiliser varies enormously.

The manufacturers of other organic fertiliser and artificial fertiliser suppliers must register with the Regulations Division only once. This registration is not

necessary if intermediary companies are involved. After all, intermediaries are already registered pursuant to Article 38 of the Implementing Decree to the Regulations Division.

The Decree does not lead to an administrative burden for citizens.

The draft Decree has been submitted to the Advisory Board on administrative costs (Dutch designation: Actal). The Board has decided against selecting the draft Decree for Actal testing.

Section 6.3 Environmental effects
The present draft Decree provides for a standardisation for the quality of compost and sewage sludge on the basis of heavy metals and arsenic. These have been transferred virtually intact from the Decree on the quality and use of other organic fertiliser. Artificial fertiliser regulated under the Fertiliser Regulation must also meet this Regulation.

With regard to the category of other organic fertiliser which could entail a risk for the environment, generic requirements will be prescribed with regard to the transfer of the Decree on the quality and use of other organic fertiliser to the Fertiliser Act in terms of the quantity of heavy metals and organic micro-pollutants. By prescribing these composition requirements, we can avoid an unbridled stream of contaminated residual and waste substances being sold as fertiliser in agriculture. These requirements are, moreover not new: they have been applicable since 1998 in respect of the assessment whether fertiliser can be traded on the basis of an exemption from the 1977 Fertiliser Decree.

Based on maximum acceptable soil contamination, the environmental criteria are formulated as composition requirements, whereby the maximum levels are linked to standards for using phosphate and nitrogen and are expressed as mg of contamination per kg of phosphate and nitrogen. Based on the application of fertiliser on arable crops and on the basis of a realistic worst-case scenario, we have worked on the assumption that 80 kg of phosphate is used per hectare, or 100 kg of nitrogen per hectare in the form of fertiliser to be assessed.
The composition requirements of substances that contain too little in the way of phosphate or nitrogen are expressed per kg of potash, per kg of neutralising value and per kg of organic substance. This presupposes a level of use of 150 kg of potash, 400 kg of neutralising value or 3 000 kg of organic substance per hectare. By expressing the composition requirements per kg of phosphate and nitrogen, a link is established with the standards for using phosphate and nitrogen, and their use is automatically curbed in that way.

The quality standardisation pertains to both the trade in fertiliser and its use.

The Decree aims to limit the contamination of the soil with heavy metals and arsenic, or with organic micro-pollutants within acceptable boundary conditions. Ideally, the maximum delivery should correspond to the quantity of contamination which, with regard to a certain maximum acceptable concentration level in the soil, is broken down or removed with the crop. That would then represent a balance This line of attack has been chosen for organic micro-

pollutants. The requirements included in the Decree correspond to the 'informal' environmental test which has been used hitherto and which has also been used since 1998 by the then 'Rijkskwaliteitsinstituut voor land- and tuinbouwproducten' [State Quality Institute for agricultural and horticultural products] (now RIKILT Institute for Food Safety of Wageningen UR) [RIKILT is the State Institute for Quality Control of Agricultural Products] during the assessment whether fertiliser, on the basis of an exemption from the 1977 Fertiliser Decree, could be traded.
Research that is currently being finalised by the State Institute for Public Health and the Environment shows that even when large quantities of other organic fertiliser are used, based on worst-case assumptions, there is virtually no risk of the background values being exceeded 2000[7].
[Note: On the basis of the final results of this research, before the draft Decree is sent to the Council of State for its recommendation, during the participation procedure, it is considered whether these environmental criteria and the current dosage restriction for compost can be further relaxed, taking into consideration the background values 2000.]

Ideally, the maximum delivery for heavy metals should correspond to the quantity of metal which, with regard to a certain maximum acceptable soil concentration level in the soil, is removed with the crop. The quantities removed are, however, minimal and provide little scope for using fertiliser.
That is why, to date, with regard to the environmental requirements as they have been adopted from the Decree on the quality and use of other organic fertiliser, the maximum soil contamination as it applies to sewage sludge has been used as a basis. In the past, these standards have, compared to the European standards for sewage sludge, become more stringent. In the Dutch situation, a tightening of the standards appeared to be desirable given the intensive use of soil and the extent of the total application of fertiliser. With the exception of the standards for copper and zinc in compost, there are no indications that these standards need to be relaxed.

As explained in Section 2, the standards for the metals copper and zinc in compost will be increased by a factor of 1.43. In doing so, the so-called enforcement factor is formalised. This enforcement factor was used because the standards for copper and for zinc in compost, due to so-called anthropogenic background contamination/concentration levels, are exceeded on a regular basis. This is attributable to the fact that the background levels of zinc and copper in the soil in certain regions, particularly in the south of the Netherlands, are considerably higher than in other parts of the Netherlands. As a result, compost produced in those regions may contain relatively high levels of copper and zinc. After all, these metals occur in soil which, along with green waste, is deposited in waste containers and also occur to some extent in the green waste itself which extracts those metals from those soils. Since this natural variation resulted in a considerable difference in content levels of zinc and copper in compost, compost

7 a nationally established generic value for good soil quality on the basis of content levels as they currently occur in the soil of nature areas and agricultural land in respect of which there is no expectation of a more than normal diffuse background contamination from anthropogenic or natural sources. Most of the land soils in relatively unpolluted areas in the Netherlands comply with this background value. These values have been established in the 'background values 2000 (AW 2000) project.

batches whose concentration levels exceeded the standard by no less than 1.43 times the standard were rejected on account of exceeding the standard.

Since this situation is undesirable both for the composting sector and for an effective enforcement, in consultation with the sector, it has been agreed to increase the standards for copper and for zinc by the relevant factor, which, in fact, comes down to formalising the situation in practice.

The present Decree provides for, *inter alia*, the composition requirements for compost, sewage sludge and other organic waste substances. The composition of animal fertiliser is not subject to environmental requirements. The main focus in the next couple of years with regard to the contamination of animal fertiliser with zinc, copper and traces of animal medication will be the reduction of external factors which help determine the quality of animal manure, such as the use of copper and zinc as an added component in animal feed, the disappearance of the manure heap of residual liquid of copper baths, which are used in dairy cattle to prevent hoof problems and the (preventive) use of animal medication.. In order to gain a clear picture of the external factors, research will be carried out in the next few years into the origin and contamination of animal fertiliser. It will also be considered whether, in time, the environmental requirements for compost and sewage sludge will need to be stepped up to include organic micro-pollutants and contaminants, in accordance with the basic package on soil policy.

Section 7 Implementation and enforcement

As indicated in Section 8 of the explanatory note to the Implementing Decree, the Regulations Division of the Ministry of Agriculture, Nature and Food Quality, is responsible for implementing an important section of the Implementing Decree. This implementation also covers the changes included in the current amending Decree in the Implementing Decree. This mainly concerns the collection, administrative inspection and registration of information that is needed for the enforcement, and includes:

- the registration of intermediary companies which trade in, process and treat, sewage sludge and compost, and the processing of the information to be supplied by these companies about their fertiliser situation (Articles 38 and 40);
- the processing of information to be supplied electronically by those companies on the transported quantities of sewage sludge and compost, the composition of fertiliser and the inspection thereof on the basis of the analysis results and transport documents (Articles 55 and 56);
- the registration of companies which trade in other organic fertiliser and artificial fertiliser (Article 43, second paragraph); and
- as the need arises, asking for information from the administration departments of those companies (Article 45, third paragraph).

The Regulations Division will, together with the General Inspectorate, carry out contextual inspections. This is done with a view to ascertaining the reliability of the information and to select companies and undertakings for a further administrative inspection by the Regulations Division or physical inspections by the General Inspectorate. In the framework of the further administrative

inspection, the Regulations Division can ask the companies or undertakings involved to complement the information, or to submit further items of evidence, from which compliance with the standards will become evident. The Regulations Division also processes the information at its disposal in order to generate information on policy and the environment from it.

The General Inspectorate is responsible for monitoring compliance with the regulations laid down by and pursuant to the Decree on the use of fertiliser and the Implementing Decree, including the carrying out of inspections of the above undertakings and by, or pursuant to, the Decree on the use of fertiliser. It is also designated for tracing punishable offences.

Enforcement is important in order to guarantee the effectiveness of the system of trading in fertiliser. As indicated in Section 2, partly with this in mind, it was decided to regulate the licensing of high-risk fertilisers early on in the trading process, by providing for a preliminary test which will mainly cater for waste substances and residual flows that can possibly be used as fertiliser. In addition, the Fertiliser Act provides a broad definition of the term ‘trading’ in fertiliser, and does not only comprise selling, transporting and delivering, but also having available in stock and offering with this in mind. That means that there is scope, at an early stage, if necessary in conjunction with other inspections, to monitor compliance with the regulations. After all, the requirements prescribed in this Decree apply even to having fertiliser at one’s disposal or offering it, or a waste substance that may be traded as such.
In the Decree, where the requirements that pertain to non-soil-based, non-biologically degradable components, such as plastics and glass, and to biologically degradable components, such as not fully composted tree stumps in compost, are fleshed out further, an attempt is made to set out unambiguous criteria that are clear to all parties. These criteria also apply to other organic fertiliser.

As is the case when the user standard system is monitored for compliance, the draft of programmatic enforcement will be used as much as possible in the inspection process on the basis of a risk analysis. In this respect, any self-regulation in various sectors will be taken into consideration. In addition to programmatic enforcement, non-select inspections will also be carried out on the trade in all types of fertiliser.
The inspection can be done by farmers, carriers, traders and manufacturers. Particularly where the inspection of manufacturers is concerned, a good rapport and cooperation will need to exist with the inspector and officials of the Inspectorate-General of the Ministry of Health, Planning and the Environment, provinces, municipalities and the police. The inspection involves physical and visual observation, inspection of the label and, where necessary, inspection sampling. There is also scope for administrative inspection. By inspecting proof of transport or the label, it must be ascertained whether the fertiliser involved can actually be traded and whether the requirements prescribed in respect of trading have been met. In the event of doubt as to the composition of the fertiliser, a sample can be taken that is sent to an accredited laboratory, where its composition can be determined. The type of fertiliser can then be identified on that basis. By ministerial regulation, rules can be prescribed pursuant to Article

21 of the Implementing Decree about the way in which the presence of heavy metals, beneficial components, organic substance, organic micro-pollutants and the more detailed composition of fertiliser is established. Rules may also be laid down concerning the way of sampling.

The infringement of the regulations of the Implementing Decree and of the Decree on the use of fertiliser are punishable in Article 1a of the Economic Offences Act. In addition, the provisions in respect of the administrative regulations of the Implementing Decree are liable to administrative fines, in which case criminal law will apply as a safety net. Reference is made, in this respect, to Section 5 of the explanatory notes to the legislative proposal on the introduction of user standards. Non-compliance with the rules in respect of management in the area of the application of manure not only leads to the infringement of the ban enforced under criminal law, laid down in the Decree on the use of fertiliser, but also has adverse consequences for subsidies, or penalties can be put in place in the framework of the Nature Protection Act. In addition, non-compliance may have adverse consequences for the level of financial support in the framework of the European income support for farmers on account of their failing to meet cross-compliance conditions.

Section 8 Comments in respect of social organisations and recommendations

The social organisations relevant in the area of the trade in fertiliser have, in the framework of policy preparation which was used as a basis to flesh out the current Decree, had the opportunity to express their views about the planned fleshing out of policy during a number of consultation meetings.

Also, the draft Decree was published in the Government Gazette (2006, No. …) in accordance with Article 63 of the Fertiliser Act and Article 92, first paragraph, of the Soil Protection Act, in which respect everyone has been given the opportunity of putting their views forward with regard to the draft.

Pursuant to Article 92, first paragraph, of the Soil Protection Act, the draft has been presented to both chambers of the States-General. The draft has also been sent to the Technical Soil Protection Committee for their recommendation.

Moreover, it has been sent to a large number of social organisations for their comments. The following reactions have been received to the draft of this Decree:

Section 9 Notification

The draft Decree was notified to the Commission of the European Communities on .. 2006 (Notification No 2006/…./NL), in compliance with Article 8(1) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services (OJ L 204), as amended by Directive 98/48/EC of 20 July 1998 (OJ L 217).

[PM reaction of Commission and other Member States.]

Section 10. Article-by-article explanatory notes

Article I

Sub-section A

Item 2

The wording of the definition of the term sewage sludge, as included in Article 1, first paragraph, sub-section g, and in Article 1, first paragraph, sub-section a, of the Decree on the quality and use of other organic fertiliser, has been slightly altered. The phrase that the sludge must originate from purification installations or septic tanks 'either wholly or in part' has been deleted, because that phrase used to cause problems in practice, since it was impossible to ascertain beyond any doubt whether most of the product originated from such installations or not. Moreover, the present definition is also more in keeping with the definition of the term 'sewage sludge' in the Sewage Sludge Directive.

Item 4

The terms 'very clean compost', 'inorganic fertiliser', 'EC fertiliser', 'other inorganic fertiliser', 'organic fertiliser', 'other organic fertiliser' and 'lime fertiliser' have been included in connection with the different categories of fertiliser in Chapter III of the Implementing Decree.
The term 'inorganic fertiliser' and its definition have been taken directly from the Fertiliser Regulation and mainly provide for so-called artificial fertiliser. The fact that the nutrients occur in the form of minerals means that they do not contain organic nutrients of animal or vegetable origin.

Sub-section B

Article 4, first, second and third paragraphs

On the basis of Article 4, first paragraph, there is a general ban on the trade in fertiliser. This ban does not apply pursuant to the second paragraph of Article 4, if with regard to the fertiliser, the generic regulations referred to in that paragraph have been met. Pursuant to the definition of 'trading' included in Article 1, first paragraph, sub-section e, of the Fertiliser Act, this ban does not only provide for the delivery of fertiliser to traders or consumers, but also, with this in mind, for the having at one's disposal of fertiliser, or offering or transporting the same. As explained in Section 3 of the general section of these explanatory notes, EC fertiliser, growth media and animal fertiliser are exempt from the ban included in the first paragraph. A conscious decision was made not to exempt all animal fertiliser. This is to do with the broad definition of 'animal fertiliser' in the Fertiliser Act, pursuant to the Nitrate Directive. On that basis, a product as a whole will fall within the scope of 'animal fertiliser' as soon as it contains animal fertiliser, in whatever proportion. By restricting the term to excrements of all animal species, an attempt was made to avoid a situation where substances that fail to meet the requirements included in Chapter III would be mixed in animal manure so as to exclude these from the trading regulations under the blanket term of animal manure.

Article 4, fourth paragraph and Article 5

These provisions that have been elucidated at length in Section 4, concern the distinction drawn in that section in respect of the waste substances regime in the Environmental Management Act.
The fourth paragraph of Article 4 pertains to the agreement provision included in Article 22.1, fourth paragraph, of the Environmental Management Act and is included to ensure that Chapter 10 of the Environmental Management Act applies to products that are made from waste substances, either wholly or in part, and that fail to meet the requirements prescribed with regard to the trade in fertiliser.
Article 5 provides for the option of including waste substances or residues, in respect of which there are no agricultural or environmental objections to them being used as (raw materials for) fertiliser, on a positive list by ministerial regulation.

Article 6
The first paragraph concerns the general requirement that fertiliser must be homogeneous in terms of composition. Homogeneity is, among others, related to the product's recognisability. Every batch must essentially be the same. Moreover, it must be possible to spread fertiliser evenly across the parcel during use, so that a mineral build-up can be avoided.
The requirement included in the second paragraph indicates that a fertiliser must have one or more of the mentioned beneficial components. The beneficial components pertain to nutrients, organic substances and neutralising value. Nutrients include the primary nutrients nitrogen (N), phosphate (P_2O_5) and potash (K_2O), the secondary nutrients calcium (Ca), magnesium (Mg), sulphur (S) and sodium (Na) and the micro-nutrients, such as boron (B), cobalt (Co), copper (Cu), iron (fe), manganese (Mn), molybdenum (Mo) and zinc (Zn). All other types of products that fall within the scope of the definition of 'fertiliser' but that do not contain beneficial components may not be traded as 'fertiliser'. A product is effective if it supplies the nutrients necessary for plant food or can neutralise the soil's acidity level, or contains organic substance which can be converted into humus, in such a way that it actually benefits the growth of the plant.
According to the third item, the use of fertiliser may not harm man, animals, plants or the environment.
The objective of the requirement included in the fourth paragraph, that fertiliser may not contain active ingredients that are banned on the basis of the Pesticides Act, is to prevent products that contain active ingredients within the meaning of the 1962 Pesticides Act, from being excluded from the licensing regime of that Act. Pursuant to Article 2a, first paragraph, of the 1962 Pesticides Act, it is, *inter alia*, prohibited to deliver an active ingredient, unless the active ingredient forms part of the composition of a pesticide licensed or registered pursuant to this Act. As is evident from the definition included in Article 1, first paragraph, sub-section g, of this Act, this involves, among others, crop protection products that are intended to be used with a view to affecting the life processes of plants, insofar as those substances are not fertilisers within the meaning of the 1947 Fertiliser Act or of the Fertiliser Act. This means that crop protection products which can also be designated as fertiliser within the meaning of the Fertiliser Act, do not fall within the licensing regime of the Pesticides Act. The reason for this exclusion was that those substances were subject to the licensing regime of the 1947 Fertiliser Act. Since as a result of the simplification of the regime of the 1947 Fertiliser Act, a closed system no longer applies to fertiliser, this agreement

provision entails the risk that crop protection products could, under the banner of fertiliser, be excluded from the regime of the Pesticides Act. This is particularly so since a broader definition of the term fertiliser is now used in the Fertiliser Act. Unlike under the scope of the 1947 Fertiliser Act, this definition is no longer restricted to products added to the soil or land, but covers anything that could serve as food for (parts of) plants, including so-called leaf fertiliser. As a result, more types of crop protection products fall within the scope of the definition of the term fertiliser, as a result of which they – without any further provisions – could be excluded from the licensing regime of the Pesticides Act.

Article 7
Article 7, first paragraph, provides for the possibility, with regard to mixing fertiliser, of laying down more detailed rules by ministerial regulation. For more details, reference is made to Section 3. The second paragraph also provides for bringing the provisions into line with those of the Soil Quality Decree. On the basis of this paragraph, if fertiliser is mixed with soil components, the rules prescribed by or pursuant to the Soil Quality Decree with regard to those soil components must be met. This is in order to avoid 'lightly contaminated soil' from being diluted to the extent that it is no longer discernible.

Article 8
For a further explanation of this article, we would refer Section 3 of these explanatory notes.

Article 9
Other inorganic fertiliser is inorganic fertiliser with the exception of EC fertiliser. For a number of these fertilisers, agreements have been reached at BENELUX level, while the remaining group concerns, in fact, fertiliser made from residual flows or waste flows which have been placed on a positive list by the Minister for Agriculture, Nature Management and Fisheries. No changes are made for the time being with regard to mineral fertiliser in respect of which agreements have been reached at BENELUX. As is the case for the remaining inorganic waste substances, they need to meet agricultural minimal requirements as prescribed in Article 9. The agricultural lower limits for this category of fertiliser are based on knowledge of residues for which exemption has been granted from the prohibitive ban in the 1977 Fertiliser Decree. It is lower limits of products which, either in solid form, or in liquid form, are agriculturally active and have passed the (informal) environmental test when exemption was granted.

Articles 10 and 11
These articles contain the agricultural minimum requirements for lime fertiliser and for other organic fertiliser whose main objective is to supply organic substance.

Article 12
The agricultural lower limits included in this article are based on the recommendations of fertiliser experts and on the minimum levels for primary nutrients included in the 1977 Fertiliser Decision. These minimum values have been widely accepted in practice. The Regulation will indicate the extraction

products and solvents or the method that are permitted to determine the nitrogen, phosphate or potash content.

Solid organic fertiliser can contain approx. 20% water. This is not the case in inorganic (mineral) fertiliser, because this would lead to the fertiliser granules sticking together. If in the case of solid other organic fertiliser, 0.5 mg per kg of dry matter would also be used, the amount will be increased from 0.5 to 0.5/0.8 = 0.625 with 20% moisture. To prevent the agricultural requirement from being stepped up unnecessarily, a decision has been made, on the experts' recommendation, in favour of 0.5 weight percentage of nutrients in the product.

Article 15
For the environmental requirements on organic micro-pollutants included in this article, reference is made to Section 3 of these explanatory notes.

Article 16
This article comprises the quantity requirements for sewage sludge. These requirements, compared to the Decree on the quality and use of other organic fertiliser, have remained intact. Pursuant to the first paragraph, sewage sludge may only be traded as fertiliser if it has been treated such that under normal circumstances, in the event of exposure to air, it will no longer spontaneously decompose, while thanks to the treatment, as a result of which various types of micro-organisms die off, its hygienic quality will improve.

Article 17
This article comprises more detailed quantity requirements for compost. The article contains two requirements. Firstly, the maximum size of the constituent parts in the compost and secondly the maximum level of contamination. These requirements help the enforcer to keep mixtures of, for example, branches, stones and soil (including pollutants) that are used under the blanket term of compost, outside of the Fertiliser Act's scope. After all, non-composted mixtures of this kind are still waste.
The first requirement helps guarantee that the product has undergone an adequate composting process. Sifting of compost forms an important part of the composting process. By sifting compost, it is homogenous in terms of composition and it does not contain parts that are difficult to degrade, such as branches and stones. The largest mesh size that is still widely used and to which the requirement is tailored is 50 mm. It has been decided to link the 50 mm requirement to the diameter, because there is always the risk that small branches longer than 50 mm do fall through the mesh after all. Constituent parts with a diameter that measure 50 mm cannot fit through a sieve with a mesh size of 50 mm. The diameter refers to the cross-section of the constituent part.
The second requirement directly aims to combat contaminations. Contaminations in compost lead to soil contamination, risks for the food chain and environmental contamination in the form of litter. Compost may not contain more than 0.5% of non-soil-based, non-degradable parts, such as glass and plastic.

<u>Sub-section C</u>
Pursuant to Article 39, intermediaries are required to keep clear records which, if animal fertiliser is treated or processed on the intermediary's undertaking,

pursuant to the third paragraph, will also contain information about the processing method, the quantity, the nature and composition of the processed fertiliser. Pursuant to Article 9 of the Decree on the quality and use of other organic fertiliser, there was a similar administrative duty on the part of those who produce and process sewage sludge. With regard to sewage sludge, this obligation is based on Article 10 of the Sewage Sludge Directive. Thanks to the current change, the duty to register sewage sludge is transferred to Article 39 of the Implementing Decree.

Sub-sections D and G

The change to Articles 41 and 46 of the Implementing Decree included in sub-sections D and G provides for the possibility, by ministerial regulation, to declare the administrative obligations which, pursuant to Chapter VII of the Implementing Decree apply to the intermediaries and which, pursuant to Chapter VIII of the Implementing Decree, apply to other suppliers and customers of companies, not applicable, either wholly or in part. This option has already been included in Article 36, sub-section e with regard to the administrative duties which, pursuant to Chapter VI of the Implementing Decree, apply to farmers.

Sub-section E

In accordance with Article 44, third paragraph, of the Implementing Decree, artificial fertiliser suppliers are required to keep clear records of the quantities of fertiliser, expressed in kg or l, and in kg of nitrogen and phosphate which they delivered, on which date and to which company. With this requirement, we hope to gain a clear picture of the supply and transport of said fertiliser. Pursuant to Article 45, fifth paragraph, this information must, upon request, be submitted to the Regulations Division. Based on this information, it is possible for the Regulations Division to carry out cross inspections of the information to be kept by the farmer on the basis of Article 32 of the Implementing Decree. As indicated in the explanatory notes to the Implementing Decree, from 2007, the situation may arise where companies are faced with the application of sub-optimal fertiliser, as a result of which the risk of standards being exceeded increases. With a view to effectively monitoring compliance with the user standards by the farmers in question, the obligation is now being introduced for manufacturers of other organic fertiliser and artificial fertiliser suppliers to register with the Regulations Division for the first time. This is also the purport of the change to Article 43, included in sub-section E.

Sub-section F

In addition, by means of the change to Article 44 provided for in sub-section F, the administrative obligation that used to apply to artificial fertiliser suppliers has been extended to include manufacturers of other organic fertiliser. Pursuant to the fifth paragraph inserted in the change, this administrative duty also pertains to information about the method of processing, quantities, the nature and composition of the treated or processed fertiliser and of the starting materials. This administrative duty, in connection with the duty included in Article 46, fifth paragraph, upon request, provides for the duty to submit information so as to make it possible to check in an adequate manner whether other organic fertiliser has been produced in accordance with Article 5 of the Implementing Decree.

Sub-sections H, I and J

The changes incorporated in sub-sections H, I and J are related to the introduction of proof of transport for compost and sewage sludge. The system of proof of transport, which is already regulated in Articles 53 and 54 of the Decree with regard to animal fertiliser, replaces the system of proof of delivery. This three-way document is an essential instrument in order to be able to follow the fertiliser flow in the entire chain, from manufacturer right through to end user. Proof of transport is a transport document that is attached to a delivery of compost or sewage sludge which accompanies it from the moment of loading until the moment of unloading. The requirement to compile proof of transport applies to all those involved in the transport sector in question and covers all areas of supply and transport of compost and sewage sludge. Pursuant to Article 55, the duty to compile proof of transport can also be prescribed for other organic fertiliser to be designated by ministerial regulation. It is expected that this option will not be fleshed out until such time as the relevant fertiliser represents a substantial flow. The provisions laid down in Articles 55 and 56 are identical to the regulations to that effect that apply to the transport of animal manure. The only difference is that not the carrier, but the supplier is responsible for completing proof of transport correctly and in full and that the information given in the sections that relate to the carrier and customer is signed by those parties. The supplier will also need to submit proof of transport.

Sub-section K

The change to Article 77 of the Implementing Decree, incorporated in sub-section K, concerns a provision in respect of transitional legislation which is further elucidated in Section 3 of these explanatory notes

Article II

Sub-section A

Item 1

With regard to sewage sludge, compost, very clean compost, lime fertiliser and other organic fertiliser, the definitions of the Implementing Decree shall apply. In that Decree, the requirements with regard to the composition and quality of this fertiliser have been laid down. With regard to the aforementioned fertiliser, the quality requirements of the Implementing Decree are closely related to the usage instructions of the Decree on the use of fertiliser. For example, there is the connection between the soundness of fertiliser for the actual purpose for which it is intended, namely to improve the soil by applying fertiliser for the benefit of growing crops, and the soundness of those substances from the point of view of protecting this very soil against contamination with undesired additional components. That is how the standards for using fertiliser directly rely on the quality requirements prescribed for fertiliser.

Moreover, we should draw your attention to the changed definition of the term ‘other organic fertiliser’. In the Decree on the quality and use of other organic fertiliser, this term pertained to sewage sludge, compost and black soil. These days, this term covers all organic fertiliser, excluding animal fertiliser, sewage sludge or compost.

Item 2 and Item 8

The definition of grassland in the Decree on the use of fertiliser has been adapted with a view to clarifying the intended purpose of a parcel of land as not only referring to the future, or planned, use of the land, but that a certain sustainability in its use determines the intended purpose of the parcel of land. For the purposes of applying Article 4b, however, pursuant to the new third paragraph of Article 1, a definition that deviates from the first paragraph, sub-section c, applies. A separate definition is necessary in order to clarify beyond any doubt that for the application of the conditions and restrictions to the destruction of turf on grassland, it is not the future use, but the previous or current use of the land that is decisive in designating the land as grassland. In that way, it is guaranteed that not one single change to the future intended purpose of the turf can lead to the conditions and restrictions of Article 4b becoming obsolete.

Under the Fertiliser Act, for the purposes of calculating the level of user standards that apply at company level, the surface area of agricultural land that belongs to the company on 15 May of the relevant calendar year is to be used as a basis. That is why, in the second paragraph of the first article, this reference date is used as a basis for applying liquid and semi-solid sewage sludge or compost.

Item h
In the past, nitrogen artificial fertiliser to which usage instructions applied pursuant to the Decree on the use of fertiliser was further elaborated upon in Annex I to the Decree on the use of fertiliser. These artificial fertiliser types were adopted from the list of fertilisers which was compiled in accordance with the 1947 Fertiliser Act with this in mind. Since the list of fertilisers, as a result of the provisions of the 1947 Fertiliser Act being transferred to the provisions of the Fertiliser Act, has now lapsed, the list included in the Decree on the use of fertiliser no longer carries any meaning. In this connection, all inorganic fertilisers that contain more than five weight percentages of dry matter of nitrogen will be designated as nitrogen artificial fertiliser. This is in accordance with the agricultural requirement which, pursuant to Article 9, first paragraph, sub-section a, of the Implementing Decree, applies to inorganic fertiliser whose main aim is to supply nitrogen.

Sub-section B
Article 1a contains the general provision that only fertiliser may be used that complies with the requirements in terms of, *inter alia*, quality, composition and labelling prescribed in the Implementing Decree. Since compost that is made only from organic waste substances that are released on the relevant farm or by the relevant private household is not traded and therefore need not meet the aforementioned requirements, the use of home-made compost is exempt from the ban included in the first paragraph of Article 1a.

Sub-section C
The purport of this sub-section is to transfer the usage instructions from the Decree on the quality and use of other organic fertiliser which pertain to the dosage of sewage sludge and compost to the Decree on the use of fertiliser. Since the user standards are related to the composition and quality requirements that are currently also prescribed for organic fertiliser other than sewage sludge and compost, usage instructions will also apply to other organic fertiliser.

Article 1b
The use of sewage sludge on agricultural land is only permitted if a representative soil sample demonstrates that the test values included in Annex III are not exceeded. It use is also restricted by a maximum permitted dosage, expressed in tonnes of dry matter per hectare per year. For more information with regard to the usage instructions of sewage sludge, reference is made to Section 5.1 of these explanatory notes.
The ban, included in the Decree on the quality and use of other organic fertiliser, on the use of sewage sludge in nature areas has been adopted in full in Article 1b of the Decree on the use of fertiliser.
Other organic fertiliser can be used on agricultural land without any dosage restrictions. This fertiliser is not permitted on other soil and on nature areas.

Article 1c
The requirement to take soil samples and carry out analyses is prescribed in Article 9 of the Sewage Sludge Directive. The methods of reference mentioned in Annex II C to the directive, as well as the requirements that are prescribed in respect of laboratories are further fleshed out by ministerial regulation. Sampling and analysis only need to be done prior to use and need not be repeated every six years, as was prescribed under the Decree on the quality and use of other organic fertiliser. It has transpired that after six years, it is virtually impossible to perceive an increase in the content levels of heavy metals and arsenic from sewage sludge. Given current quality standards, no added value can be derived from periodically repeating the compulsory soil sampling requirement.

Article 1d
In Article 1d, the old ban of Article 28a of the Decree on the quality and use of other organic fertiliser has been adopted on the use of sewage sludge and other organic fertiliser, or mixtures involving these fertilisers, on soils that are intended for grazing, or if feed crops are harvested from those less than three weeks prior to harvesting. Similarly, during the growing season, sewage sludge and other organic fertiliser may not be used on soils that are planted with vegetables and fruit or on soils on which vegetables and fruits are grown that are eaten raw.
The purport of this ban is to implement Article 7 of the Sewage Sludge Directive.

Article 1e
Pursuant to Article 1e, it is permitted to use compost on agricultural land and other land. The use on these soils, though, is restricted to a maximum permitted dosage. The dosage standards for compost have, further to the assessment of the Decree on the quality and use of other organic fertiliser, been extended and now also provide for the possibility of using, once every five years, 30 tonnes of dry matter per hectare on building land or other land and 15 tonnes of dry matter per hectare on grassland. For more information on the usage instructions of sewage sludge, reference is made to Section 5.2 of these explanatory notes.

Article 1f
Finally, Article if provides for the possibility of using compost on other land as a one-off measure in a quantity of no more than 200 tonnes of dry matter per hectare, if this planned use has been notified. The information that is to be

notified pursuant to the second paragraph is restricted to the information that is necessary to ascertain that the delivery is actually done on a one-off basis.

Sub-section D
In connection with the possibility included in Article 1 e of using compost on nature areas, a provision has now been included in Article 2 that the total quantity of compost and animal fertiliser used may not exceed the phosphate standard of than [*sic*] 20 kg of phosphate per hectare per year and of 70 kg of phosphate per hectare per year, specified in that article, if the land concerned is grassland.

Sub-section E
By changing the heading of Section 3, it is indicated that the provisions of that section also provide for the use of other organic fertiliser.

Sub-sections F and G
Articles 3, first paragraph, 3a and 3b of the Decree on the use of fertiliser and Articles 28, 28b and 28c of the Decree on the quality and use of other organic fertiliser contain similar provisions with regard to the ban on using animal manure, sewage sludge and compost on soil covered in snow or frozen ground, either wholly or in part, if the top soil layer is saturated with water or if the soil is simultaneously being irrigated, sprinkled or infiltrated. That is why the provisions of the Decree on the quality and use of other organic fertiliser have, one by one, been adopted in the relevant provisions of the Decree on the use of fertiliser.
In addition, the regulations included in Articles 6, 6a, 6b and 6d with regard to the use of animal fertiliser or nitrogen artificial fertiliser on (non-cultivated soil on) steep slopes has been extended to include sewage sludge and compost, in accordance with the regulations included in the old Articles 34a, 34b and 34c of the Decree on the quality and use of other organic fertiliser.

Sub-section H
With regard to sewage sludge, Article 4 provides for a spreading period which runs parallel to that of solid animal manure. One of the characteristics of solid animal manure and semi-solid sewage sludge is that a large proportion of the nitrogen is present in organic form and will consequently not become available for absorption by the crop until some time later. This means that the nitrogen present in sewage sludge, as is the case in animal manure, can, during use, leach into, or run off, the soil. On account of the fact that sewage sludge has the same features as animal manure, and compost hardly has those features at all, also from the point of view of enforceability, Article 29 of the Decree on the quality and use of other organic fertiliser has been adopted in full in Article 4 of the Decree on the use of fertiliser.

Sub-section I
By the Act of [*PM*] amending the Soil Protection Act, with a view to laying down new rules for the application of building materials, soil and dredge spoil, Article 7 of the Soil Protection Act provides for the possibility of sub-delegating to ministerial regulation, an option included for those sections of the Decree on the use of fertiliser in which new scientific insights can, on a regular basis, lead to slight adjustments to the regulations. The competence to sub-delegate is only intended for sections for which, on account of the flexibility, an adjustment by ministerial regulation is necessary. This concerns in the first place the list

included in Annex I with relatively nitrogen-needy crops which can be cultivated straight after turf has been destroyed.
Article 4b, third paragraph, prescribes that the additional application of nitrogen fertiliser on a relatively nitrogen-needy crop is only permitted if, and insofar as, a soil analysis has confirmed that to be necessary. Adding the phrase 'containing nitrogen' to fertiliser makes it clearer that sampling and analysis are only necessary if the fertiliser involved contains nitrogen.

Sub-section J
In the first paragraph of the old Article 30 of the Decree on the quality and use of other organic fertiliser, sewage sludge, a mixture of sewage sludge and compost or black soil, or a mixture of animal fertiliser and sewage sludge, compost or black soil must be applied on grassland or building land on a low-emission basis. This regulation has been adopted in the first paragraph of Article 5 of the present Decree. Article 5, third paragraph, of the Decree on the use of fertiliser stipulates that on grassland and in fruit-growing, solid animal manure need not be applied on a low-emission basis. Article 30, third paragraph, of the Decree on the quality and use of other organic fertiliser contained a similar exemption with regard to semi-solid sewage sludge on grassland. The reason for this is that solid manure and semi-solid sewage sludge can only be applied on a low-emission basis by using the sub-soil injection method, and this method in fruit-growing and grassland is not possible. One of the characteristics of solid animal manure and semi-solid sewage sludge is that a large proportion of the nitrogen is present in organic form and will consequently not become available for absorption by the crop until some time later. That is certainly the case if the animal manure or sewage sludge is not injected into the soil. There is then the risk on steep slopes of nitrates being washed with surface water to lower-lying areas, where a huge concentration of nitrogen compounds builds up that can no longer be absorbed by the crops cultivated in that area. That means that solid or semi-solid sewage sludge may not be used on steep slopes of grassland, and that solid manure may not be used on steep slopes that are only used for fruit-growing. When nitrogen artificial fertiliser is used, these problems do not occur, because the nitrogen in nitrogen artificial fertiliser is present in mineral form for 100% and is, as a result, immediately available for absorption by the crop.

Sub-section L
The old Article 37 of the Decree on the quality and use of other organic fertiliser provides for the possibility of provinces, in the framework of experiments, in the event of exemption, starting the spreading ban on building land that is located on sandy or loessial soil at a later date. The first paragraph of Article 8 has been brought into line with this.

Sub-section M
The second sub-section that qualifies for sub-delegation is the list of catch crops which are sown immediately after corn has been cultivated. Reference is made to the comments under sub-section I with regard to the reason for this sub-delegation.

Sub-section N

Article 9 contains an agreement provision for laboratories based in another Member State of the European Union, or another State that is party to a relevant Treaty that is binding upon the Netherlands. The old Article 9, which provided for harmonisation between the Decree on the quality and use of other organic fertiliser and the Decree on the use of fertiliser, is now rendered meaningless.

THE MINISTER FOR AGRICULTURE, NATURE
AND FOOD QUALITY,

THE SECRETARY OF STATE FOR HOUSING,
PLANNING AND THE ENVIRONMENT,

Annex
Transposition table of the transferred provisions from the 1947 Fertiliser Act, the 1977 Fertiliser Decree and the Decree on the quality and use of other organic fertiliser to the provisions of the Fertiliser Act, the Implementing Decree and the Decree on the use of fertiliser.

1947 Fertiliser Act	**Fertiliser Act**	**Decree implementing the Fertiliser Act**
2	4	
3	38, second paragraph	
4	4, sub-section b	
7	48 and 5:18 ABW	
8	48	
11	48	
1977 Fertiliser Decree		
2		4, first paragraph
3		4, second paragraph
4		19 and 21, first paragraph, sub-sections d and e
5		18, second paragraph

Decree on the quality and use of other organic fertiliser	**Decree implementing the Fertiliser Act**	**Decree on the use of fertilisers**
1, first paragraph	1, first paragraph	1, first paragraph
1. fourth paragraph		1, second paragraph
1, fifth paragraph.		1, third paragraph
2	4, first and second paragraph	
3	16, first paragraph	
4, first paragraph	16, second and third paragraph	
4, second paragraph	21, first paragraph, sub-section b	
6	17	
8, first paragraph	21, first paragraph, sub-section d, and second paragraph	
8, third paragraph	55, first paragraph and third paragraph, sub-section c	
8a	20	
9, first paragraph	39, first paragraph and third paragraph, sub-section b	
9, second paragraph	41, sub-section b	
9, fourth paragraph	41, sub-section c	
9, fifth paragraph	39, fourth paragraph and 34, first paragraph	
9, sixth paragraph	39, fourth paragraph and 34,	

	second paragraph	
9, eighth paragraph	19, first and second paragraph, and 55	
12, first paragraph		1a
12, fourth paragraph	70, fourth paragraph	
14		1b, first and third paragraphs, and 1c, first paragraph
16		1c, second paragraph
17		1b, first and third paragraphs,
18		1b, first and third paragraphs,
19, first paragraph		1b, first and third paragraphs,
19, second paragraph		1b, fifth paragraph
20, first paragraph		1e, first and third paragraphs,
20, third paragraph		1e, second paragraph
20, fourth paragraph		1e, fourth paragraph
22		1e, second paragraph
23, first paragraph		1b, first paragraph
23, second paragraph		1e, first and third paragraphs, sub-section a
23, third paragraph		1e, second paragraph
24		1f
26		1e, second paragraph
27		1b, first paragraph, and 1e, first, sixth and seventh paragraphs,
28		3
28a		1d
28b		3a
28c		3b
29		4
30		5
34		6
34a		6a
34b		6b
34c		6c
36		7
37		8