

# ANALYSIS OF HB 2618

---

---

House Agriculture & Ecology Committee

January 26, 1998

---

---

## **BACKGROUND:**

**Fertilizer Laws.** Under the state's commercial fertilizer laws, persons who distribute fertilizer in bulk form must be licensed by the Washington State Department of Agriculture (WSDA) and fertilizer distributed in packaged form must be registered with the WSDA. (RCW 15.54.275 and 15.54.325.) Lime is subject to an inspection fee of 15 /ton of material distributed during the fiscal year and all other commercial fertilizers are subject to an inspection fee of 30 /ton of material distributed. (RCW 15.54.350.)

**Solid Waste.** Under the solid waste laws, it is unlawful for a person to deposit solid waste onto or under the surface of the ground on into the waters of the state except at a solid waste site for which a permit has been issued. (RCW 70.95.170 and 70.95.240.) Solid waste— is defined by those laws to include industrial wastes and recyclable materials. (RCW 70.95.030(19).) However, the solid waste laws are not to be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for the transportation of the material to a recycler for reuse or reclamation. (RCW 70.95.903.)

**1997 Act.** Legislation enacted in 1997 allows a person to receive the express approval of the Department of Ecology (DOE) to distribute as a commercial fertilizer a material generated as a byproduct from the manufacturing of wood products. It requires the person to request the approval in writing and requires the DOE to issue the approval if the material will not pose unacceptable hazards to human health and the environment and its use as a commercial fertilizer is consistent with protecting human health and the environment. Such an approved product is not regulated as a solid waste. The legislation allows the WSDA to prohibit the distribution of the a material as commercial fertilizer in certain instances. It also establishes special labeling requirements for the "guaranteed analysis" that must be listed for such a material that is used as a soil amendment. (Chapter 427, Laws of 1997.)

## **SUMMARY:**

**Registration.** Bulk fertilizer must now be registered for distribution in this state, in the manner currently required for packaged fertilizer. The registration application must identify

---

Prepared for the House Agriculture & Ecology Committee  
by Kenneth Hirst, Analyst (786-7105)  
Office of Program Research

*any waste-derived fertilizer. An application for a waste-derived fertilizer or fertilizer materials containing phosphate must identify the concentration of each non-nutritive metal for which WSDA standards have been set. (Section 4(1)&(2).) The Director of Agriculture may adopt rules establishing standards for allowable levels of non-nutritive metals in commercial fertilizers. Until federal risk-based standards are adopted or studies have shown that these standards are not adequate to protect human health and the environment, the WSDA is to use Canadian figures for maximum acceptable metal concentrations in products and maximum acceptable cumulative metal additions to soil. However, application rates in this state are to be used to determine if maximum acceptable cumulative metal additions to the soil are being exceeded. (Section 18.)*

*Before registering a commercial fertilizer that is a waste-derived fertilizer, the WSDA must obtain written approval from the Department of Ecology. (Section 4(3).) A waste-derived fertilizer is one that is derived from an industrial byproduct, co-product, or other material that would otherwise be disposed of if a market for reuse was not an option. It includes a solid waste and a hazardous waste, but does not include biosolids, biosolids products, or wastewaters regulated under other laws. (Section 2(26).)*

*DOE Review. The DOE must evaluate whether the use of the proposed waste-derived fertilizer is consistent with the state's solid waste laws, hazardous waste management act, biosolids standards, and other applicable laws. The DOE must accept the standards set by the WSDA for non-nutrient metals unless more stringent standards exist under DOE's dangerous waste rules. The DOE must consult with the Department of Health (DOH) and the Department of Labor and Industries in approving or disapproving the use. Its decision may be appealed to the Pollution Control Hearings Board. (Sections 20 and 21.) From July 1, 1998, through June 30, 1999, the approval process is not required for commercial fertilizers currently registered or distributed under a bulk distribution license. (Section 4(5).) The WSDA may cancel the registration of a product or refuse to register a product for evidence that the use of a waste-derived fertilizer poses unacceptable hazards to human health or the environment. (Section 13.)*

*1997 Act. The provisions of legislation enacted in 1997 are repealed that allow a person to*

**- 2 -**

*receive the express approval of the DOE to distribute as a commercial fertilizer a material generated as a byproduct from the manufacturing of wood products and regulate labeling for soil amendments. (Sections 2, 26, and 28.)*

*Fees. The fee for registering fertilizer is changed. The fee is \$25 for each product, rather than \$25 for the first product and \$10 for each additional product as currently. A surcharge of \$12 is added for each registration for the period July 1, 1998, to July 1, 1999. (Section 4.) The inspection fee for fertilizers is increased to 36 /ton (from 30 /ton) and for lime it is increased to 25 /ton (from 15 /ton). (Section 7.)*

*Adulteration. A fertilizer is now considered to be adulterated if it contains deleterious or harmful ingredients in a sufficient amount to be injurious to animals, humans, aquatic life, soil, or water when applied in accordance with label directions or if adequate warnings or directions are not present on the label to protect animals, humans, aquatic life, soil, or water. It is expressly not considered to be adulterated for non-nutritive metals for which WSDA standards have been set if it complies with the standards set for the metals. (Section 11.) All fertilizers distributed in containers must be labelled as currently provided for packaged fertilizers. Added to the information that must appear on a label are: a list of contents for non-nutritive metals for which WSDA standards have been set; and a statement regarding the maximum allowable level of metals, if applied directly. (Section 6.)*

*Civil Penalties. The maximum civil penalty that may be levied by the Director of Agriculture for violations of the commercial fertilizer laws or rules is increased to not more than \$27,500/violation (from \$1,000/violation). (Section 15.) Monies received from these penalties are no longer deposited in the Agricultural Local Fund; they are now to be deposited in the General Fund. (Section 17.)*

*Uptake Study. The WSDA must conduct a comprehensive study of the uptake of metals by plants. It must interpret, with the DOE and the DOH, the study results regarding potential impacts to public and ecological health and report the results to the appropriate committees of the Legislature by December 31, 2000. (Section 17.)*

***Soil Amendments.*** A process is established under which waste-derived soil amendments may be exempted from solid waste permitting. A waste-derived soil amendment is any substance derived from solid waste that is intended to improve the physical characteristics of the soil, but which is not a commercial fertilizer, agricultural liming agent, or unmanipulated manure nor a biosolid or biosolid product, or wastewater regulated under other laws, or other material exempted by rule of the DOE. (Section 19.)

*The application for the exemption is to be submitted to the local health department and must contain analytical data showing that all the constituents of the soil amendment meet WSDA standards for non-nutritive metals and other information deemed appropriate by the health department or the DOE. The health department may grant the exemption with the concurrence of the DOE, which must provide its review within 45 days. The health department's decision must be rendered within 90 days. The local board of health may establish reasonable fees for the review of exemption applications. The health department may contract with the DOE to fulfill these responsibilities. (Section 23.) Such an exemption may be revoked under certain circumstances. (Section 24.) Decisions of the health department and the DOE are appealable in the same manner as their other decisions under the solid waste laws. (Section 25.)*

*The WSDA must expand its fertilizer data base to include additional information on waste-derived products. Except for confidential information regarding fertilizer tonnages distributed in the state, information in the fertilizer data base is to be available to the public upon request. (Section 27.)*

***Other.*** The name and address of a person licensed to distribute bulk fertilizer no longer must be displayed on all labels, invoices, and storage facilities for fertilizer distributed by the person. (Section 3(3).) The fertilizer inspection and fee no longer applies to fertilizers distributed to persons who are licensed as bulk distributors but do not distribute products they register or otherwise register such products. (Section 7.) Nor do reporting requirements that currently apply to persons licensed to distribute bulk fertilizer apply to such persons. (Sections 8, 9, and 10.) It is no longer expressly unlawful to distribute bulk fertilizer without a license and express grounds for canceling such a license are repealed. (Section 12.)

**- 4 -**

***APPROPRIATION:*** \$407,747 is appropriated to the WSDA from the General Fund for the fiscal year ending June 30, 1999.

**-5-**