

SENATE BILL REPORT

SB 6474

As Reported By Senate Committee On:
Agriculture & Environment, February 5, 1998
Ways & Means, February 10, 1998

Title: An act relating to fertilizer regulation.

Brief Description: Adopting the fertilizer regulation act.

Sponsors: Senators Jacobsen, Rasmussen, Kline, T. Sheldon, Patterson and Fairley; by request of Governor Locke.

Brief History:

Committee Activity: Agriculture & Environment: 1/27/98, 2/5/98 [DPS-WM, DNP].
Ways & Means: 2/10/98 [DPS (AE), DNP].

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 6474 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Oke and Rasmussen.

Minority Report: Do not pass.

Signed by Senators Fraser and McAuliffe.

Staff: Kari Guy (786-7437)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6474 as recommended by Committee on Agriculture & Environment be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Hochstatter, Loveland, McDonald, Rossi, Schow, Snyder and Swecker.

Minority Report: Do not pass.

Signed by Senators Brown, Fraser, Spanel and Thibaudeau.

Staff: Kari Guy (786-7437)

Background: Registration and standards: All fertilizers, including fertilizers made with industrial byproducts, must be registered or licensed annually by the Department of Agriculture. The product label must include the guaranteed analysis of nitrogen, phosphorous, and potassium. The label is not required to include information about components in the fertilizer other than plant nutrients.

The inert, non-nutritive ingredients in fertilizer are not subject to regulation by either the state or federal governments. However, state law requires that no fertilizer product may be adulterated. Adulteration is defined as containing materials that would make the product injurious to beneficial plant life when applied according to the label. Adulteration is also defined as not meeting the guaranteed analysis of nutrients, or containing unwanted, viable, seed.

Canada does regulate non-nutritive metals in fertilizer through the Canadian Fertilizer Act and adopted regulations. The regulations were developed based on soil background levels.

Registration fees: The application for fertilizer registration must be accompanied by a fee of \$25 for the first product, and \$10 for each additional product. An inspection fee of 15 cents per ton of lime and 30 cents per ton of fertilizer must also be paid annually.

Penalties: Any person who fails to comply with the fertilizer laws may be subject to a civil penalty of not more than \$1,000 for each violation. Money collected is deposited in the agricultural local fund. Any person who aids in the violation may also be subject to the penalty.

Soil amendments: Byproducts from the manufacturing of wood products may be distributed as a commercial fertilizer after review by the Department of Ecology. The Department of Ecology must provide written approval to the Department of Agriculture certifying that use of the product is consistent with the state biosolids standards, the Model Toxics Control Act, the Water Pollution Control Act, the Washington Clean Air Act, and the Hazardous Waste Management Act.

The use of industrial byproducts in fertilizer has raised concerns about impacts to human health and the environment. The extent of plant uptake of heavy metals from soils, and the potential for human health impacts are unclear. However, it has been suggested that greater state review of industrial byproducts in fertilizer is needed to minimize the potential for impacts to human health or the environment.

Summary of Substitute Bill: Registration and standards: Waste-derived fertilizer is defined as a commercial fertilizer that is derived from an industrial byproduct or other material that would otherwise be disposed of. This may include solid or hazardous wastes, but does not include regulated biosolids or wastewater. Micronutrient fertilizer is defined as a commercial fertilizer that contains commercially valuable concentrations of micronutrients.

The Canadian standards for maximum acceptable cumulative metal additions to soil are adopted. The Department of Agriculture may revise the standards by rule if federal or other risk-based studies are adopted.

An application for registration of a waste-derived fertilizer or micronutrient fertilizer must identify all of the fertilizer components, and verify that all components are registered. If any components are not registered, then the application must include the concentration of each metal subject to the Canadian standards.

Beginning July 1, 1999, the Department of Agriculture must obtain written approval from the Department of Ecology before a product is registered that use of the waste-derived

fertilizer is consistent with the Solid Waste Management Act, the Hazardous Waste Management Act, and the federal Resource Conservation and Recovery Act. If standards in the state dangerous waste regulations are more stringent than the Canadian metals standards or the standards adopted by the Department of Agriculture by rule, the more stringent standards apply. The decision of the Department of Ecology may be appealed to the Pollution Control Hearings Board.

The label of any commercial fertilizer must include information required by the Department of Labor and Industries Hazard Communication rules, and the following statement:

"This product has been registered with the Washington State Department of Agriculture. When applied as directed, this fertilizer meets the Washington standards for arsenic, cadmium, cobalt, mercury, molybdenum, lead, nickel, selenium, and zinc. You have the right to receive specific information about Washington standards from the distributor of this product."

A commercial fertilizer is adulterated if a constituent in a sample exceeds the maximum concentration stated on the registration application or the label.

Registration fees: The registration fee for fertilizers is \$25 per product.

Penalties: Any person who fails to comply with the fertilizer regulations may be subject to a fine of not more than \$7,500 for each violation. Money collected as fines must be deposited in the general fund.

Soil amendments: Soil amendments are defined as substances intended to improve the physical characteristics of the soil, not including composted material or certain fertilizers. Waste-derived soil amendments are soil amendments derived from solid waste, but do not include biosolids or wastewater. Waste-derived soil amendments that meet the Canadian metals standards may apply for an exemption from solid waste permitting requirements to the Department of Ecology. The department must take comment from the local health department, and make a final decision on the application within 90 days. The department may revoke an exemption at any time if the quality or use of the waste-derived soil amendment changes or presents a threat to human health or the environment. The decision of the Department of Ecology may be appealed to the Pollution Control Hearings Board.

Information and study: The Department of Agriculture must expand its fertilizer database to include additional information on waste-derived products. Information in the database must be made available to the public upon request. The Department of Agriculture, in consultation with the Departments of Ecology and Health, must prepare a biennial report to the Legislature on levels of nonnutritive substances in fertilizers. The first report is due December 1, 1999.

The Department of Agriculture, in cooperation with the Departments of Ecology and Health, must conduct a comprehensive study of plant uptake of metals. A report of the results of the study must be submitted to the Legislature by December 31, 2000.

The Department of Ecology, in cooperation with the Departments of Agriculture and Health, must undertake a study of whether dioxins occur in fertilizers, soil amendments, and soils,

and if so, at what levels. The department must report its findings to the Legislature in November 1998.

Substitute Bill Compared to Original Bill: Canadian standards for allowable levels of metals are adopted in statute rather than rule. Labeling requirements are changed to refer to existing hazard communication rules, and to require a statement that the product meets state standards. The definition of adulteration is revised to reference adherence to stated concentrations on the registration application or the label.

The Department of Ecology, rather than the local health jurisdiction, is to determine whether waste-derived soil amendments may be exempt from solid waste permitting requirements.

The penalty for noncompliance is decreased to \$7,500. Fee increases are limited to the increase in registration fees.

Two reports to the Legislature are added: the study of dioxin in fertilizers and soils by the Department of Ecology; and the biennial report from the Department of Agriculture on levels of nonnutritive substances in fertilizers.

The appropriation of \$407,747 is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Agriculture & Environment): Use of the Canadian standards is a good starting point to provide oversight of waste-derived fertilizer use. If federal or risk-based standards are developed, those standards can be adopted in rule. Some industrial byproducts include valuable plant nutrients; this bill will allow those to be used while ensuring other components of the fertilizer are safe. Studies of plant uptake of heavy metals and of dioxins will provide needed information and help the state to refine the regulatory process if needed.

Testimony Against (Agriculture & Environment): The Canadian standards were not based on risk to public health but instead on an allowable increase over soil background levels. Heavy metals can build up in soil over time. There have been no studies to evaluate whether the Canadian standards are adequate to protect the environment and public health in Washington. Certain wastes, such as wastes from cement kilns, steel mills, and tire incinerators should be banned outright. Labeling, notice requirements, enforcement, and penalties in the bill should be strengthened. The bill ignores dioxin and other hazardous constituents that may have a significant impact on public health.

Testified (Agriculture & Environment): PRO: Ozzie Wilkinson, Northwest Alloys; Heather Hansen, WA Friends of Farms & Forests; Mike Schwisow, WSPC; Larry Bonczkowska, Agrium; Jerry Smedes, NW Waste Industries; Scott McKinnie, Far West Fruit Association; Ray Shindler, WA Association Wheat Growers; CON: Jon Stier, Washington Public Interest Research Group; Patty Martin, United Farm Workers; Bruce Jennings, Washington Toxics Coalition; Tom Witte, farmer; Bill Weiss; John Fawcett-Long, Western

Sustainable Agriculture Working Group; Karen McDonell; David Batter, Asia-Pacific Environmental Exchange; Julie Puhich, Washington Tilth Producers; Lin Nelson; Doris Cellarius, Sierra Club; Wm. Broadbent, TESC-ERC; Sheryl Ene Kakuta.

Testimony For (Ways & Means): This bill helps to ensure that no products are used that cause a health threat to landowners in Washington. It is important to assure the public that Washington agricultural products are safe.

Testimony Against (Ways & Means): This bill keeps the public in the dark about what is in fertilizers and adopts standards not based on public health. The waste water should be banned from use in fertilizer. Costs of the program shouldn't fall on the public; the program should be funded through increased fees.

Testified (Ways & Means): PRO: Carol Jolly, Governor's office; Dan Coyne, Far West Fertilizer; CON: John Stier, WashPIRG; Bruce Jennings, Washington Toxics Coalition; Cathy Benson.