

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1489

Chapter 73, Laws of 2011

(partial veto)

62nd Legislature
2011 Regular Session

WATER QUALITY--FERTILIZER RESTRICTIONS

EFFECTIVE DATE: 01/01/13

Passed by the House April 1, 2011
Yeas 56 Nays 37

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 25, 2011
Yeas 32 Nays 16

BRAD OWEN

President of the Senate

Approved April 14, 2011, 10:44 a.m.,
with the exception of Section 4 which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1489** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 14, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1489

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

By House Environment (originally sponsored by Representatives Billig, Morris, Frockt, Carlyle, Crouse, Ryu, Finn, Jinkins, Fitzgibbon, Tharinger, Rolfes, Liiias, Moscoso, Stanford, Dunshee, Pettigrew, Ladenburg, Ormsby, Van De Wege, Moeller, Hunt, Pedersen, Maxwell, Roberts, Reykdal, Kagi, Darneille, Clibborn, Jacks, and Kenney)

READ FIRST TIME 02/15/11.

1 AN ACT Relating to protecting water quality through restrictions on
2 fertilizer containing phosphorus; amending RCW 15.54.270, 15.54.470,
3 and 15.54.474; adding a new section to chapter 15.54 RCW; and providing
4 an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 15.54.270 and 1998 c 36 s 2 are each amended to read
7 as follows:

8 ~~((Terms used in))~~ The definitions in this section apply throughout
9 this chapter ~~((have the meaning given to them in this chapter))~~ unless
10 the context clearly ~~((indicates))~~ requires otherwise.

11 (1) "Brand" means a term, design, or trademark used in connection
12 with the distribution and sale of one or more grades of commercial
13 fertilizers.

14 (2) "Bulk fertilizer" means commercial fertilizer distributed in a
15 nonpackaged form such as, but not limited to, tote bags, tote tanks,
16 bins, tanks, trailers, spreader trucks, and railcars.

17 (3) "Calcium carbonate equivalent" means the acid-neutralizing
18 capacity of an agricultural liming material expressed as a weight
19 percentage of calcium carbonate.

1 (4) "Commercial fertilizer" means a substance containing one or
2 more recognized plant nutrients and that is used for its plant nutrient
3 content or that is designated for use or claimed to have value in
4 promoting plant growth, and shall include limes, gypsum, and
5 manipulated animal and vegetable manures. It does not include
6 unmanipulated animal and vegetable manures, organic waste-derived
7 material, and other products exempted by the department by rule.

8 (5) "Composting" means the controlled aerobic degradation of
9 organic waste materials. Natural decay of organic waste under
10 uncontrolled conditions is not composting.

11 (6) "Customer-formula fertilizer" means a mixture of commercial
12 fertilizer or materials of which each batch is mixed according to the
13 specifications of the final purchaser.

14 (7) "Department" means the department of agriculture of the state
15 of Washington or its duly authorized representative.

16 (8) "Director" means the director of the department of agriculture.

17 (9) "Distribute" means to import, consign, manufacture, produce,
18 compound, mix, or blend commercial fertilizer, or to offer for sale,
19 sell, barter, exchange, or otherwise supply commercial fertilizer in
20 this state.

21 (10) "Distributor" means a person who distributes.

22 (11) "Fertilizer material" means a commercial fertilizer that
23 either:

24 (a) Contains important quantities of no more than one of the
25 primary plant nutrients: Nitrogen, phosphate, and potash;

26 (b) Has eighty-five percent or more of its plant nutrient content
27 present in the form of a single chemical compound; or

28 (c) Is derived from a plant or animal residue or by-product or
29 natural material deposit that has been processed in such a way that its
30 content of plant nutrients has not been materially changed except by
31 purification and concentration.

32 (12) "Grade" means the percentage of total nitrogen, available
33 phosphoric acid, and soluble potash stated in whole numbers in the same
34 terms, order, and percentages as in the "guaranteed analysis," unless
35 otherwise allowed by a rule adopted by the department. Specialty
36 fertilizers may be guaranteed in fractional units of less than one
37 percent of total nitrogen, available phosphorus or phosphoric acid, and

1 soluble potassium or potash. Fertilizer materials, bone meal, manures,
2 and similar materials may be guaranteed in fractional units.

3 (13) "Guaranteed analysis."

4 (a) Until the director prescribes an alternative form of
5 "guaranteed analysis" by rule the term "guaranteed analysis" shall mean
6 the minimum percentage of plant nutrients claimed in the following
7 order and form:

8	Total nitrogen (N)	percent
9	Available phosphoric acid (P ₂ O ₅)	percent
10	Soluble potash (K ₂ O)	percent

11 The percentage shall be stated in whole numbers unless otherwise
12 allowed by the department by rule.

13 The "guaranteed analysis" may also include elemental guarantees for
14 phosphorus (P) and potassium (K).

15 (b) For unacidulated mineral phosphatic material and basic slag,
16 bone, tankage, and other organic phosphatic materials, the total
17 phosphoric acid or degree of fineness may also be guaranteed.

18 (c) Guarantees for plant nutrients other than nitrogen, phosphorus,
19 and potassium shall be as allowed or required by rule of the
20 department. The guarantees for such other nutrients shall be expressed
21 in the form of the element.

22 (d) The guaranteed analysis for limes shall include the percentage
23 of calcium or magnesium expressed as their carbonate; the calcium
24 carbonate equivalent as determined by methods prescribed by the
25 association of official analytical chemists; and the minimum percentage
26 of material that will pass respectively a one hundred mesh, sixty mesh,
27 and ten mesh sieve. The mesh size declaration may also include the
28 percentage of material that will pass additional mesh sizes.

29 (e) In commercial fertilizer, the principal constituent of which is
30 calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO₄.2H₂O)
31 shall be given along with the percentage of total sulfur.

32 (14) "Imported fertilizer" means any fertilizer distributed into
33 Washington from any other state, province, or country.

34 (15) "Label" means the display of all written, printed, or graphic

1 matter, upon the immediate container, or a statement accompanying a
2 fertilizer.

3 (16) "Labeling" includes all written, printed, or graphic matter,
4 upon or accompanying a commercial fertilizer, or advertisement,
5 brochures, posters, television, and radio announcements used in
6 promoting the sale of such fertilizer.

7 (17) "Licensee" means the person who receives a license to
8 distribute a commercial fertilizer under the provisions of this
9 chapter.

10 (18) "Lime" means a substance or a mixture of substances, the
11 principal constituent of which is calcium or magnesium carbonate,
12 hydroxide, or oxide, singly or combined.

13 (19) "Manipulation" means processed or treated in any manner,
14 including drying to a moisture content less than thirty percent.

15 (20) "Manufacture" means to compound, produce, granulate, mix,
16 blend, repackage, or otherwise alter the composition of fertilizer
17 materials.

18 (21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron;
19 manganese; molybdenum; sodium; and zinc.

20 (22) "Micronutrient fertilizer" means a produced or imported
21 commercial fertilizer that contains commercially valuable
22 concentrations of micronutrients but does not contain commercially
23 valuable concentrations of nitrogen, phosphoric acid, available
24 phosphorus, potash, calcium, magnesium, or sulfur.

25 (23) "Official sample" means a sample of commercial fertilizer
26 taken by the department and designated as "official" by the department.

27 (24) "Organic waste-derived material" means grass clippings,
28 leaves, weeds, bark, plantings, prunings, and other vegetative wastes,
29 uncontaminated wood waste from logging and milling operations, food
30 wastes, food processing wastes, and materials derived from these wastes
31 through composting. "Organic waste-derived material" does not include
32 products that include biosolids.

33 (25) "Packaged fertilizer" means commercial fertilizers, either
34 agricultural or specialty, distributed in nonbulk form.

35 (26) "Person" means an individual, firm, brokerage, partnership,
36 corporation, company, society, or association.

37 (27) "Percent" or "percentage" means the percentage by weight.

1 (28) "Produce" means to compound or fabricate a commercial
2 fertilizer through a physical or chemical process, or through mining.
3 "Produce" does not include mixing, blending, or repackaging commercial
4 fertilizer products.

5 (29) "Registrant" means the person who registers commercial
6 fertilizer under the provisions of this chapter.

7 (30) "Specialty fertilizer" means a commercial fertilizer
8 distributed primarily for nonfarm use, such as, but not limited to, use
9 on home gardens, lawns, shrubbery, flowers, golf courses, municipal
10 parks, cemeteries, greenhouses, and nurseries.

11 (31) "Ton" means the net weight of two thousand pounds avoirdupois.

12 (32) "Total nutrients" means the sum of the percentages of total
13 nitrogen, available phosphoric acid, and soluble potash as guaranteed
14 and as determined by analysis.

15 (33) "Washington application rate" is calculated by using an
16 averaging period of up to four consecutive years that incorporates
17 agronomic rates that are representative of soil, crop rotation, and
18 climatic conditions in Washington state.

19 (34) "Waste-derived fertilizer" means a commercial fertilizer that
20 is derived in whole or in part from solid waste as defined in chapter
21 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include
22 fertilizers derived from biosolids or biosolids products regulated
23 under chapter 70.95J RCW or wastewaters regulated under chapter 90.48
24 RCW.

25 (35)(a) "Turf" means land, including residential property,
26 commercial property, and publicly owned land, which is planted in
27 closely mowed, managed grass.

28 (b) "Turf" does not include pasture land, land used to grow grass
29 for sod, or any other land used for agricultural production or
30 residential vegetable or flower gardening.

31 (36) "Turf fertilizer" means a commercial fertilizer that is
32 labeled for use on turf.

33 **NEW SECTION. Sec. 2.** A new section is added to chapter 15.54 RCW
34 to read as follows:

35 (1) A person may not:

36 (a) Except as otherwise provided in this section, apply turf
37 fertilizer that is labeled as containing phosphorus to turf;

1 (b) Apply turf fertilizer labeled as containing phosphorus to turf
2 when the ground is frozen;

3 (c) Intentionally apply turf fertilizer labeled as containing
4 phosphorus to an impervious surface;

5 (d) Except as otherwise provided in this section, sell turf
6 fertilizer that is labeled as containing phosphorus; or

7 (e) Display turf fertilizer that is labeled as containing
8 phosphorus in a retail store unless the turf fertilizer is also clearly
9 labeled for a use permitted by this section.

10 (2) The prohibitions in this section on the application, sale, and
11 retail display of turf fertilizer that is labeled as containing
12 phosphorus, other than the prohibitions in subsection (1)(b) and (c) of
13 this section, do not apply in the following instances:

14 (a) Application for the purpose of establishing grass or repairing
15 damaged grass, using either seeds or sod, during the growing season in
16 which the grass is established;

17 (b) Application to an area if the soil in the area is deficient in
18 plant available phosphorus, as shown by a soil test performed no more
19 than thirty-six months before the application; or

20 (c) Application to pasture, interior house plants, flower and
21 vegetable gardens located on either public or private property, land
22 used to grow grass for sod, or any land used for agricultural or
23 silvicultural production.

24 (3) If a retailer can show proof that a product prohibited for sale
25 under subsection (1)(d) and (e) of this section was in stock and
26 physically in the retail location before January 1, 2012, that retail
27 location may sell that product until it is sold out.

28 (4)(a) Nothing in this section:

29 (i) Requires the enforcement or monitoring of compliance with this
30 section by local governments; or

31 (ii) Requires local governments to participate in the
32 administration of this section, including the verification of soil
33 tests under subsection (2)(b) of this section.

34 (b) A city or county may not adopt a local ordinance regarding the
35 application or sale of turf fertilizer that is labeled as containing
36 phosphorus that is less restrictive than this section.

1 **Sec. 3.** RCW 15.54.470 and 1998 c 36 s 11 are each amended to read
2 as follows:

3 (1) Except for violations of section 2 of this act, any person who
4 violates any provision of this chapter shall be guilty of a
5 misdemeanor, and the fines collected shall be disposed of as provided
6 under RCW 15.54.480.

7 (2) Nothing in this chapter shall be considered as requiring the
8 department to report for prosecution or to cancel the registration of
9 a commercial fertilizer product or to stop the sale of fertilizers for
10 violations of this chapter, when violations are of a minor character,
11 and/or when the department believes that the public interest will be
12 served and protected by a suitable notice of the violation in writing.

13 (3) It shall be the duty of each prosecuting attorney to whom any
14 violation of this chapter is reported, to cause appropriate proceedings
15 to be instituted and prosecuted in a court of competent jurisdiction
16 without delay. Before the department reports a violation of this
17 chapter for such prosecution, an opportunity shall be given the
18 distributor to present his or her view in writing or orally to the
19 department.

20 (4) The department is hereby authorized to apply for, and the court
21 authorized to grant, a temporary or permanent injunction restraining
22 any person from violating or continuing to violate any of the
23 provisions of this chapter or any rule adopted under this chapter,
24 notwithstanding the existence of any other remedy at law. Any such
25 injunction shall be issued without bond.

26 ***Sec. 4.** *RCW 15.54.474 and 1998 c 36 s 12 are each amended to read*
27 *as follows:*

28 *Except for violations of section 2 of this act, every person who*
29 *fails to comply with this chapter, or any rule adopted under it, may be*
30 *subjected to a civil penalty, as determined by the director, in an*
31 *amount of not more than seven thousand five hundred dollars for every*
32 *such violation. Each and every such violation shall be a separate and*
33 *distinct offense. Every person, who, through an act of commission or*
34 *omission, procures, aids, or abets in the violation shall be considered*
35 *to have violated this chapter and may be subject to the penalty*

1 ***provided for in this section.***
**Sec. 4 was vetoed. See message at end of chapter.*

2 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2013.
Passed by the House April 1, 2011.
Passed by the Senate March 25, 2011.
Approved by the Governor April 14, 2011, with the exception of
certain items that were vetoed.
Filed in Office of Secretary of State April 14, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 4, Engrossed Substitute House Bill 1489 entitled:

"AN ACT Relating to protecting water quality through restrictions on fertilizer containing phosphorus."

This bill limits the use, sale, and retail display of turf fertilizer that contains phosphorus, as of January 1, 2013.

Section 4 would prevent the Department of Agriculture from enforcing the bill through the issuance of civil penalties. Without this tool, the Department would be unable to effectively implement the bill.

For this reason, I have vetoed Section 4 of Engrossed Substitute House Bill 1489.

It is unfortunate that the final bill did not include the exemption for fertilizers made from biosolids, manure and other organic materials. These products provide a valued and beneficial use of materials that would otherwise need to be managed as waste. Since the bill is not effective until January 2013, I would entertain legislation in 2012 to exempt these organic products from the limits established in the bill.

With the exception of Section 4, Engrossed Substitute House Bill 1489 is approved."