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.

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

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to protecting water quality through restrictions on fertilizer containing phosphorus; amending RCW 15.54.270, 15.54.470, and 15.54.474; adding a new section to chapter 15.54 RCW; and providing an effective date.

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

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

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

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

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

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.
(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

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

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

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

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

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

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

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

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

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

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

(12) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and
soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis."

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

<table>
<thead>
<tr>
<th>Nutrient</th>
<th>Guarantee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total nitrogen (N)</td>
<td>percent</td>
</tr>
<tr>
<td>Available phosphoric acid (P₂O₅)</td>
<td>percent</td>
</tr>
<tr>
<td>Soluble potash (K₂O)</td>
<td>percent</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

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

(15) "Label" means the display of all written, printed, or graphic
matter, upon the immediate container, or a statement accompanying a fertilizer.

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

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

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

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

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

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

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

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

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

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

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

(27) "Percent" or "percentage" means the percentage by weight.
"Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.

"Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

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

"Ton" means the net weight of two thousand pounds avoirdupois.

"Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

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

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

"Turf" means land, including residential property, commercial property, and publicly owned land, which is planted in closely mowed, managed grass.

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

"Turf fertilizer" means a commercial fertilizer that is labeled for use on turf.

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

(1) A person may not:

(a) Except as otherwise provided in this section, apply turf fertilizer that is labeled as containing phosphorus to turf;
(b) Apply turf fertilizer labeled as containing phosphorus to turf when the ground is frozen;

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

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

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

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

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

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

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

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

(4)(a) Nothing in this section:

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

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

(b) A city or county may not adopt a local ordinance regarding the application or sale of turf fertilizer that is labeled as containing phosphorus that is less restrictive than this section.
Sec. 3. RCW 15.54.470 and 1998 c 36 s 11 are each amended to read as follows:

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

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

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

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

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

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

*Sec. 4 was vetoed. See message at end of chapter.

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."