

HOUSE BILL REPORT

SSB 6474

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to fertilizer regulation.

Brief Description: Adopting the fertilizer regulation act.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Jacobsen, Rasmussen, Kline, T. Sheldon, Patterson and Fairley; by request of Governor Locke).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/25/98, 2/26/98 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

Minority Report: Without recommendation. Signed by 1 member: Representative Anderson, Assistant Ranking Minority Member.

Staff: Bill Lynch (786-7092).

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. The application for fertilizer registration must be accompanied by a fee of \$25 for the first product, and \$10 for each additional product. Lime is subject to an inspection fee of 15 cents per ton of material distributed during the fiscal year and all other commercial fertilizers are subject to an inspection fee of 30 cents per ton of material distributed.

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 or 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 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 of Amended Bill: 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 any waste-derived fertilizer, micronutrient fertilizer, or fertilizer materials containing phosphates. The registration application must also identify the fertilizer components in commercial fertilizer and verify that all the components in the product are registered. If a component isn't registered, then the application must include the concentration of each metal in each fertilizer component for which standards are established. Waste-derived and micronutrient fertilizers must include information to ensure the product complies with state hazardous waste laws and provisions of the federal Resource Conservation and Recovery Act (RCRA). The registration fee for fertilizers is \$25 per product.

Standards are established for the allowable levels of non-nutritive metals in commercial fertilizers. The standards to be used are the Canadian figures for maximum acceptable cumulative metal additions to soil.

Before registering a commercial fertilizer that is a waste-derived fertilizer or a micronutrient fertilizer, the WSDA must obtain written approval from the Department of Ecology. A waste-derived fertilizer is one that is derived from solid waste, but does not include fertilizers derived from biosolids or biosolids products, or wastewaters regulated under other laws.

DOE Review. The DOE must evaluate whether the use of the proposed waste-derived fertilizer or the micronutrient fertilizer is consistent with the state's solid waste laws, hazardous waste management act, and the federal Resource Conservation and Recovery Act. The DOE must accept the Canadian standards set in statute 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. Beginning on July 1, 1999, once the DOE has approved a waste-derived fertilizer or micronutrient fertilizer, its subsequent use in another product during that registration cycle does not require DOE review.

1997 Act. The provisions that allow a person to 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 are repealed.

Labeling. All fertilizers distributed in this state must have the package labeled with a statement that: the product has been registered with the DOA; the fertilizer meets the Washington standards for arsenic, cadmium, cobalt, mercury, molybdenum, lead, nickel, selenium, and zinc; and the consumer has the right to receive specific information about Washington standards from the distributor of the product. After July 1, 1999, the label must also state that information regarding the components of the product is available on the internet at the Department of Agriculture's website.

A fertilizer is now considered to be adulterated if the concentration of any non-nutritive constituent in a representative sample of commercial fertilizer exceeds the maximum concentration stated on the registration application or on the label.

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 from up to \$1000/violation to not more than \$7,500/violation. Monies received from these penalties are no longer deposited in the Agricultural Local Fund; they are now to be deposited in the general fund.

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, unmanipulated manure, a biosolid or biosolid product, or wastewater regulated under other laws, or other material exempted by rule of the DOE.

The application for the exemption is to be submitted to the DOE and must contain analytical data showing that all the constituents of the soil amendment meet statutory standards for non-nutritive metals and other information deemed appropriate by the DOE. The DOE must review the application and forward a copy to all interested jurisdictional health departments for review and comment. The jurisdictional health departments must respond with comments within 45 days to the DOE, which must then either approve or disapprove the application. Final action on the application must occur within 90 days

after the receipt of the application. Decisions of the DOH and the DOE are appealable to the Pollution Control Hearings Board.

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.

Dioxin Study. The DOE, in conjunction with the DOA and the DOH, must undertake a study of whether dioxins occur in fertilizers, soil amendments, and soils, and if so, at what levels. The DOE is required to seek additional financial and technical assistance from appropriate federal agencies, the fertilizer industry, and other appropriate sources. The DOE must report its findings to the Legislature in November 1998.

Information. The WSDA must expand its fertilizer data base to include additional information on waste-derived and micronutrient 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.

After July 1, 1999, the Department of Agriculture must post on the internet the information contained in applications for fertilizer.

Amended Bill Compared to Substitute Bill: The amended bill requires after July 1, 1999, package labels on fertilizer to contain a statement that information is available on the Department of Agriculture's internet website regarding the components in the product. The department must post information contained in applications for fertilizer registration on the internet. A number of technical amendments are made.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For: This gives Washington the most comprehensive and restrictive standards in all of the Americas. The studies on dioxins and metals uptake by plants will be useful.

Testimony Against: The Canadian standards aren't risk-based. This allows for industrial wastes to be dumped without regard to safety.

Testified: Carol Jolly, Governor's policy staff (pro); Bruce Jennings, Washington Toxics Coalition (con); and Pete Fretwell, Far West Fertilizer (pro).