

ESHB 1489 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AS AMENDED 03/25/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that:

4 (a) Phosphorus loading of surface waters can stimulate the growth
5 of weeds and algae and that this growth can have adverse environmental,
6 health, and aesthetic effects;

7 (b) Turf fertilizer contributes to phosphorus loading. Limits on
8 turf fertilizer labeled as containing phosphorus can significantly
9 reduce the discharge of phosphorus into the state's ground and surface
10 waters;

11 (c) Turf fertilizer containing no or very low amounts of phosphorus
12 is readily available and maintaining established turf in a healthy and
13 green condition is not dependent upon the addition of turf fertilizer
14 labeled as containing phosphorus; and

15 (d) While significant reductions of phosphorus from laundry
16 detergent and dishwashing detergent have been achieved, similar
17 progress in reducing phosphorus contributions from turf fertilizer has
18 not been accomplished.

19 (2) It is the intent of the legislature to significantly limit the
20 use of turf fertilizers labeled as containing phosphorus.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (13) "Guaranteed analysis."

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

14	Total nitrogen (N)	percent
15	Available phosphoric acid (P ₂ O ₅)	percent
16	Soluble potash (K ₂ O)	percent

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

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

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

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

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

1 (e) In commercial fertilizer, the principal constituent of which is
2 calcium sulfate (gypsum), the percentage of calcium sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$)
3 shall be given along with the percentage of total sulfur.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (28) "Produce" means to compound or fabricate a commercial
7 fertilizer through a physical or chemical process, or through mining.
8 "Produce" does not include mixing, blending, or repackaging commercial
9 fertilizer products.

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

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

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

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

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

24 (34) "Waste-derived fertilizer" means a commercial fertilizer that
25 is derived in whole or in part from solid waste as defined in chapter
26 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include
27 fertilizers derived from biosolids or biosolids products regulated
28 under chapter 70.95J RCW or wastewaters regulated under chapter 90.48
29 RCW.

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

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

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

1 (b) "Turf fertilizer" does not include commercial fertilizers
2 derived solely from organic materials, biosolids, or biosolid products.

3 NEW SECTION. Sec. 3. A new section is added to chapter 15.54 RCW
4 to read as follows:

5 (1) A person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **Sec. 4.** RCW 15.54.470 and 1998 c 36 s 11 are each amended to read
8 as follows:

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

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

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

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

32 **Sec. 5.** RCW 15.54.474 and 1998 c 36 s 12 are each amended to read
33 as follows:

34 Except for violations of section 3 of this act, every person who
35 fails to comply with this chapter, or any rule adopted under it, may be
36 subjected to a civil penalty, as determined by the director, in an

1 amount of not more than seven thousand five hundred dollars for every
2 such violation. Each and every such violation shall be a separate and
3 distinct offense. Every person, who, through an act of commission or
4 omission, procures, aids, or abets in the violation shall be considered
5 to have violated this chapter and may be subject to the penalty
6 provided for in this section.

7 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2013."

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8 On page 1, line 2 of the title, after "phosphorus;" strike the
9 remainder of the title and insert "amending RCW 15.54.270, 15.54.470,
10 and 15.54.474; adding a new section to chapter 15.54 RCW; creating a
11 new section; and providing an effective date."

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