

HOUSE BILL REPORT

HB 2618

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to fertilizer regulation.

Brief Description: Adopting the fertilizer regulation act.

Sponsors: Representatives Chandler, Linville, O'Brien, Costa and Sump; by request of Governor Locke.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/26/98, 2/7/98 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Delvin; Koster; Mastin; Regala and Sump.

Minority Report: Without recommendation. Signed by 2 members: Representatives Anderson, Assistant Ranking Minority Member; and Cooper.

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. (RCW 15.54.275 and 15.54.325.) 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 per ton of material distributed. (RCW 15.54.350.)

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 on 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 Substitute 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).

Standards 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 of legislation enacted in 1997 are repealed 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.

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

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.

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.

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.

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, or unmanipulated manure nor 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 health department and the DOE are appealable to the Pollution Control Hearings Board.

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.

Other. The name and address of a person licensed to distribute bulk fertilizer no longer must be displayed on all labels, invoices, and storage facilities for fertilizer distributed by the person. It is no longer expressly unlawful to distribute bulk fertilizer without a license and express grounds for canceling such a license are repealed.

Substitute Bill Compared to Original Bill: The appropriation is removed. The fee increases are deleted. Rather than have the Department of Ecology adopt rules for the standards, the standards are set forth in statute so they can become effective as soon as the law takes effect. The definition of adulteration is narrowed. A study of dioxins is added. Other changes are also made.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill has been prepared in response to concern expressed regarding heavy metals in fertilizer. Tests have not found elevated levels of metals in Washington's food crops, this bill is an attempt at prevention. It is the first in the nation. The bill requires standards for heavy metals in all fertilizers and labeling to inform the public about those metals. Today's food supply and plant nutrients are safe. Valuable resources that are well within background levels, biosolid standards, and the Canadian standards should be beneficially used, not disposed of. The issue for fertilizer should be its contents, not the source of its contents. Recycling the magnesium produced by an industrial process and needed by food plants is a valuable and safe use of the material. The bill makes formal a process already in use. The absence of the use of good science in this debate has hurt an entire community.

Testimony Against: Industry is taking toxic waste and putting it in fertilizer to dispose of it. It is a health hazard and will make the land unusable in a few decades. This bill does not prevent the activity. Certain forms of waste should be banned as fertilizer components and standards should be set that protect children. The bill uses Canadian standards that do not protect the soil or human health and does not address dioxin, found to be in products in this state, or similar contaminants at all. The bill should authorize citizen lawsuits for violations. The notification provided by the labeling disguises the problems, not reveal them. Iowa taxes fertilizer to monitor health hazards. This bill taxes the public. Until it sets its own standards, this state should adopt the California standards or standards equal to the concentrations of heavy metals in the soil already. This state imports waste to add to fertilizer. It should not become a national wasteland. Air quality, not just plant uptake, should be measured in the bill's study. If plants do not take up the metals and they do not migrate to the groundwater, they are in the soil for human exposure. The amount of waste imported should be public information. Full disclosure would allow the marketplace to reward responsible fertilizer companies.

Testified: Carol Jolly, Office of the Governor; Larry Buncskowski, Agrium US, Inc.; Pete Ramano, Quincy Farm Chemicals; Ozzie Wilkinson, NW Alloys; and Scott McKinney, Far West Fertilizer (in favor). John Stern, WASHPIrg; Bruce Jennings, Washington Toxics Coalition; Doris Celarius, Sierra Club (opposed).