
SECOND SUBSTITUTE HOUSE BILL 2618

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Chandler, Linville, O'Brien, Costa and Sump; by request of Governor Locke)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to fertilizer regulation; amending RCW 15.54.270,
2 15.54.275, 15.54.325, 15.54.330, 15.54.340, 15.54.350, 15.54.362,
3 15.54.380, 15.54.414, 15.54.420, 15.54.436, 15.54.470, 15.54.474,
4 15.54.480, 15.54.800, 70.95.030, and 70.95.240; adding new sections to
5 chapter 15.54 RCW; adding a new section to chapter 70.95 RCW; creating
6 new sections; repealing RCW 15.54.335 and 70.95.830; and prescribing
7 penalties.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature intends to strengthen
10 the state's fertilizer adulteration laws to protect human health and
11 the environment by:

12 (a) Ensuring that all fertilizers meet standards for allowable
13 metals;

14 (b) Allowing fertilizer purchasers and users to know about the
15 contents of fertilizer products; and

16 (c) Clarifying the department of ecology's oversight authority over
17 waste-derived fertilizers.

18 (2) The legislature intends to provide better information to the
19 public on fertilizers, soils, and potential health effects by

1 authorizing additional studies on plant uptake of metals and levels of
2 dioxins in soils and products.

3 **Sec. 2.** RCW 15.54.270 and 1997 c 427 s 1 are each amended to read
4 as follows:

5 Terms used in this chapter have the meaning given to them in this
6 chapter unless the context clearly indicates otherwise.

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

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

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

16 (4) "Commercial fertilizer" means a substance containing one or
17 more recognized plant nutrients and that is used for its plant nutrient
18 content or that is designated for use or claimed to have value in
19 promoting plant growth, and shall include limes, gypsum, and
20 manipulated animal and vegetable manures(~~(, and a material approved~~
21 ~~under RCW 70.95.830)~~). It does not include unmanipulated animal and
22 vegetable manures, organic waste-derived material, and other products
23 exempted by the department by rule.

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

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

30 (~~(+6)~~) (7) "Department" means the department of agriculture of the
31 state of Washington or its duly authorized representative.

32 (~~(+7)~~) (8) "Director" means the director of the department of
33 agriculture.

34 (~~(+8)~~) (9) "Distribute" means to import, consign, manufacture,
35 produce, compound, mix, or blend commercial fertilizer, or to offer for
36 sale, sell, barter, exchange, or otherwise supply commercial fertilizer
37 in this state.

38 (~~(+9)~~) (10) "Distributor" means a person who distributes.

1 (~~(10)~~) (11) "Fertilizer material" means a commercial fertilizer
2 that either:

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

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

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

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

19 (~~(11)~~) (13) "Guaranteed analysis."

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

24	Total nitrogen (N)	percent
25	Available phosphoric acid (P205)	percent
26	Soluble potash (K20)	percent

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

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

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

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

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

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

11 ~~((f) The guaranteed analysis for a material approved under RCW
12 70.95.830 and to be used as a soil amendment shall include the name and
13 percentage of each soil amending ingredient and the total percentage of
14 all other ingredients.~~

15 ~~(12))~~ (14) "Imported fertilizer" means any fertilizer distributed
16 into Washington from any other state, province, or country.

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

20 ~~((13))~~ (16) "Labeling" includes all written, printed, or graphic
21 matter, upon or accompanying a commercial fertilizer, or advertisement,
22 brochures, posters, television, and radio announcements used in
23 promoting the sale of such fertilizer.

24 ~~((14))~~ (17) "Licensee" means the person who receives a license to
25 distribute a commercial fertilizer under the provisions of this
26 chapter.

27 ~~((15))~~ (18) "Lime" means a substance or a mixture of substances,
28 the principal constituent of which is calcium or magnesium carbonate,
29 hydroxide, or oxide, singly or combined.

30 ~~((16))~~ (19) "Manipulation" means processed or treated in any
31 manner, including drying to a moisture content less than thirty
32 percent.

33 ~~((17))~~ (20) "Manufacture" means to compound, produce, granulate,
34 mix, blend, repackage, or otherwise alter the composition of fertilizer
35 materials.

36 ~~((18))~~ (21) "Micronutrients" are: Boron; chlorine; cobalt;
37 copper; iron; manganese; molybdenum; sodium; and zinc.

38 (22) "Micronutrient fertilizer" means a produced or imported
39 commercial fertilizer that contains commercially valuable

1 concentrations of micronutrients but does not contain commercially
2 valuable concentrations of nitrogen, phosphoric acid, available
3 phosphorus, potash, calcium, magnesium, and sulfur.

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

6 ~~((19))~~ (24) "Organic waste-derived material" means grass
7 clippings, leaves, weeds, bark, plantings, prunings, and other
8 vegetative wastes, uncontaminated wood waste from logging and milling
9 operations, food wastes, food processing wastes, and materials derived
10 from these wastes through composting. "Organic waste-derived material"
11 does not include products that include biosolids.

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

14 ~~((20))~~ (26) "Person" means an individual, firm, brokerage,
15 partnership, corporation, company, society, or association.

16 ~~((21))~~ (27) "Percent" or "percentage" means the percentage by
17 weight.

18 ~~((22))~~ (28) "Produce" means to compound or fabricate a commercial
19 fertilizer through a physical or chemical process, or through mining.
20 "Produce" does not include mixing, blending, or repackaging commercial
21 fertilizer products.

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

24 ~~((23))~~ (30) "Specialty fertilizer" means a commercial fertilizer
25 distributed primarily for nonfarm use, such as, but not limited to, use
26 on home gardens, lawns, shrubbery, flowers, golf courses, municipal
27 parks, cemeteries, greenhouses, and nurseries.

28 ~~((24))~~ (31) "Ton" means the net weight of two thousand pounds
29 avoirdupois.

30 ~~((25))~~ (32) "Total nutrients" means the sum of the percentages of
31 total nitrogen, available phosphoric acid, and soluble potash as
32 guaranteed and as determined by analysis.

33 (33) "Washington application rate" is calculated by using up to a
34 four-year averaging period that incorporates agronomic rates that are
35 representative of soil, crop rotation, and climatic conditions in
36 Washington state.

37 (34) "Waste-derived fertilizer" means a commercial fertilizer that
38 is derived in whole or in part from solid waste as defined in chapter
39 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include

1 fertilizers derived from biosolids or biosolids products regulated
2 under chapter 70.95J RCW or wastewaters regulated under chapter 90.48
3 RCW.

4 **Sec. 3.** RCW 15.54.275 and 1993 c 183 s 2 are each amended to read
5 as follows:

6 (1) No person may distribute a ~~((commercial))~~ bulk fertilizer in
7 this state~~((, except packaged fertilizers,))~~ until a license to
8 distribute has been obtained by that person. An annual license is
9 required for each out-of-state or in-state location that distributes
10 ~~((nonpackaged commercial))~~ bulk fertilizer in Washington state. An
11 application for each location shall be filed on forms provided by the
12 master license system and shall be accompanied by an annual fee of
13 twenty-five dollars per location. The license shall expire on the
14 master license expiration date.

15 (2) An application for license shall include the following:

16 (a) The name and address of licensee.

17 (b) Any other information required by the department by rule.

18 ~~((The name and address shown on the license shall be shown on~~
19 ~~all labels, pertinent invoices, and storage facilities for fertilizer~~
20 ~~distributed by the licensee in this state.~~

21 ~~(4))~~ If an application for license renewal provided for in this
22 section is not filed prior to ~~((the))~~ the master license expiration
23 date, a delinquency fee of twenty-five dollars shall be assessed and
24 added to the original fee and shall be paid by the applicant before the
25 renewal license shall be issued. The assessment of this delinquency
26 fee shall not prevent the department from taking any other action as
27 provided for in this chapter. The penalty shall not apply if the
28 applicant furnishes an affidavit that he or she has not distributed
29 this commercial fertilizer subsequent to the expiration of his or her
30 prior license.

31 **Sec. 4.** RCW 15.54.325 and 1993 c 183 s 3 are each amended to read
32 as follows:

33 (1) No person may distribute in this state a ~~((packaged))~~
34 commercial fertilizer until it ~~((is))~~ has been registered with the
35 department by the ~~((distributor whose name appears on the label))~~
36 producer, importer, or packager of that product. A bulk fertilizer

1 does not require registration if all commercial fertilizer products
2 contained in the final product are registered.

3 ~~(2)~~ An application for ((each packaged fertilizer product))
4 registration shall be made on a form furnished by the department and
5 shall be accompanied by an initial fee of twenty-five dollars for the
6 first product and ten dollars for each additional product. Labels for
7 each product shall accompany the application. All companies planning
8 to mix ((packaged)) customer-formula fertilizers shall include the
9 statement "customer-formula grade mixes" under the column headed
10 "product name" on the product registration application form. All
11 customer-formula fertilizers sold under one brand name shall be
12 considered one product. ((Upon the approval of an application by the
13 department, a copy of the registration shall be furnished to the
14 applicant. All registrations expire on June 30th of each year except
15 that for the period beginning January 1, 1994, the registration shall
16 expire on June 30, 1995.

17 ~~(2))~~ (3) An application for registration shall include the
18 following:

19 (a) The product name;

20 (b) The brand and grade;

21 (c) The guaranteed analysis;

22 (d) Name ((and)), address, and phone number of the registrant;

23 (e) Labels for each product being registered;

24 (f) Identification of those products that are (i) waste-derived
25 fertilizers, (ii) micronutrient fertilizers, or (iii) fertilizer
26 materials containing phosphate;

27 (g) Identification of the fertilizer components in the commercial
28 fertilizer product and verification that all the components are
29 registered. If any of the components are not registered, then the
30 application must include the concentration of each metal in each
31 fertilizer component, for which standards are established under RCW
32 15.54.800;

33 (h) Waste-derived fertilizers and micronutrient fertilizers shall
34 include at a minimum, information to ensure the product complies with
35 chapter 70.105 RCW and subtitles C and D of the resource conservation
36 and recovery act, 42 U.S.C. Sec. 6901 et seq.; and

37 (i) Any other information required by the department by rule.

38 ~~((3))~~ (4) If an application for renewal of the product
39 registration provided for in this section is not filed prior to July

1 1st of any one year, a penalty of ten dollars per product shall be
2 assessed and added to the original fee and shall be paid by the
3 applicant before the renewal registration shall be issued. The
4 assessment of this late collection fee shall not prevent the department
5 from taking any other action as provided for in this chapter. The
6 penalty shall not apply if the applicant furnishes an affidavit that he
7 or she has not distributed this commercial fertilizer subsequent to the
8 expiration of his or her prior registration.

9 **Sec. 5.** RCW 15.54.330 and 1993 c 183 s 4 are each amended to read
10 as follows:

11 (1) The department shall examine the ((packaged)) commercial
12 fertilizer product registration application form and labels for
13 conformance with the requirements of this chapter. If the application
14 and appropriate labels are in proper form and contain the required
15 information, the particular ((packaged)) commercial fertilizer products
16 shall be registered by the department and a certificate of registration
17 shall be issued to the applicant. All registrations expire June 30th
18 of each year.

19 (2) In reviewing the ((packaged)) commercial fertilizer product
20 registration application, the department may consider experimental
21 data, manufacturers' evaluations, data from agricultural experiment
22 stations, product review evaluations, or other authoritative sources to
23 substantiate labeling claims. The data shall be from statistically
24 designed and analyzed trials representative of the soil, crops, and
25 climatic conditions found in the northwestern area of the United
26 States.

27 (3) In determining whether approval of a labeling statement or
28 guarantee of an ingredient is appropriate, the department may require
29 the submission of a written statement describing the methodology of
30 laboratory analysis utilized, the source of the ingredient material,
31 and any reference material relied upon to support the label statement
32 or guarantee of ingredient.

33 (4) Before registering a waste-derived fertilizer or micronutrient
34 fertilizer, the department shall obtain written approval from the
35 department of ecology as provided in section 18 of this act. Once a
36 waste-derived fertilizer or micronutrient fertilizer has been approved
37 by the department of ecology, its subsequent use in another product
38 during that registration cycle shall not require department of ecology

1 review. This subsection shall apply to new and renewal registration
2 applications for periods beginning July 1, 1999, and thereafter.

3 **Sec. 6.** RCW 15.54.340 and 1993 c 183 s 5 are each amended to read
4 as follows:

5 (1) Any (~~packaged~~) commercial fertilizer distributed in this
6 state (~~in containers~~) shall have placed on or affixed to the package
7 a label setting forth in clearly legible and conspicuous form the
8 following information:

9 (a) The net weight;

10 (b) The product name, brand, and grade. The grade is not required
11 if no primary nutrients are claimed;

12 (c) The guaranteed analysis;

13 (d) The name and address of the registrant or licensee. The name
14 and address of the manufacturer, if different from the registrant or
15 licensee, may also be stated; (~~and~~)

16 (e) Any information required under WAC 296-62-054;

17 (f) At a minimum the following labeling statement: "This product
18 has been registered with the Washington State Department of
19 Agriculture. When applied as directed, this fertilizer meets the
20 Washington standards for arsenic, cadmium, cobalt, mercury, molybdenum,
21 lead, nickel, selenium, and zinc. You have the right to receive
22 specific information about Washington standards from the distributor of
23 this product."

24 (g) Other information as required by the department by rule.

25 (2) If a commercial fertilizer is distributed in bulk, a written or
26 printed statement of the information required by subsection (1)
27 (~~above~~) of this section shall accompany delivery and be supplied to
28 the purchaser at the time of delivery.

29 (3) Each delivery of a customer-formula fertilizer shall be subject
30 to containing those ingredients specified by the purchaser, which
31 ingredients shall be shown on the statement or invoice with the amount
32 contained therein, and a record of all invoices of customer-formula
33 grade mixes shall be kept by the registrant or licensee for a period of
34 twelve months and shall be available to the department upon request:
35 PROVIDED, That each such delivery shall be accompanied by either a
36 statement, invoice, a delivery slip, or a label if bagged, containing
37 the following information: The net weight; the brand; the guaranteed
38 analysis which may be stated to the nearest tenth of a percent or to

1 the next lower whole number; the name and address of the registrant or
2 licensee, or manufacturer, or both; and the name and address of the
3 purchaser.

4 (4) Any person who distributes a commercial fertilizer in this
5 state shall make available to the purchaser on request, a copy of
6 standards for metals established in RCW 15.54.800.

7 **Sec. 7.** RCW 15.54.350 and 1993 c 183 s 6 are each amended to read
8 as follows:

9 (1) There shall be paid to the department for all commercial
10 fertilizers distributed in this state to nonregistrants or nonlicensees
11 an inspection fee of fifteen cents per ton of lime and thirty cents per
12 ton of all other commercial fertilizer distributed during the year
13 beginning July 1st and ending June 30th.

14 (2) Distribution of commercial fertilizers for shipment to points
15 outside this state (~~may be~~) is excluded.

16 (3) When more than one distributor is involved in the distribution
17 of a commercial fertilizer, the last registrant or licensee who
18 distributes to a nonregistrant or nonlicensee is responsible for paying
19 the inspection fee, unless the payment of fees has been made by a prior
20 distributor of the fertilizer.

21 **Sec. 8.** RCW 15.54.362 and 1993 c 183 s 7 are each amended to read
22 as follows:

23 (1) Every registrant or licensee who distributes commercial
24 fertilizer in this state shall file a semiannual report on forms
25 provided by the department setting forth the number of net tons of each
26 commercial fertilizer so distributed in this state. The reports will
27 cover the following periods: January 1st through June 30th and July
28 1st through December 31st of each year. Upon permission of the
29 department, an annual statement under oath may be filed for the annual
30 reporting period of July 1st through June 30th of any year by any
31 person distributing within the state less than one hundred tons for
32 each six-month period during any calendar year, and upon filing such
33 statement, such person shall pay the inspection fee required under RCW
34 15.54.350. The department may accept sales records or other records
35 accurately reflecting the tonnage sold and verifying such reports.

36 (2) Each person responsible for the payment of inspection fees for
37 commercial fertilizer distributed in this state shall include the

1 inspection fees with the report on the same dates and for the same
2 reporting periods mentioned in subsection (1) of this section. If in
3 one year a registrant or licensee distributes less than (~~eighty-~~
4 ~~three~~) seventy tons of commercial fertilizer or less than one hundred
5 (~~sixty-seven~~) tons of commercial lime or equivalent combination of
6 the two, the registrant or licensee shall pay the minimum inspection
7 fee. The minimum inspection fee shall be twenty-five dollars per year.

8 (3) The department may, upon request, require registrants or
9 licensees to furnish information setting forth the net tons of
10 commercial fertilizer distributed to each location in this state.

11 (4) Semiannual or annual reports filed after the close of the
12 corresponding reporting period shall pay a late filing fee of twenty-
13 five dollars. Inspection fees which are due and have not been remitted
14 to the department by the due date shall have a late-collection fee of
15 ten percent, but not less than twenty-five dollars, added to the amount
16 due when payment is finally made. The assessment of this late
17 collection fee shall not prevent the department from taking any other
18 action as provided for in this chapter.

19 (5) It shall be a misdemeanor for any person to divulge any
20 information provided under this section that would reveal the business
21 operation of the person making the report. However, nothing contained
22 in this subsection may be construed to prevent or make unlawful the use
23 of information concerning the business operations of a person in any
24 action, suit, or proceeding instituted under the authority of this
25 chapter, including any civil action for the collection of unpaid
26 inspection fees, which action is hereby authorized and which shall be
27 as an action at law in the name of the director of the department.

28 **Sec. 9.** RCW 15.54.380 and 1993 c 183 s 9 are each amended to read
29 as follows:

30 (1) If the analysis shall show that any commercial fertilizer falls
31 short of the guaranteed analysis in any one plant nutrient or in total
32 nutrients, penalty shall be assessed in favor of the department in
33 accordance with the following provisions:

34 (a) A penalty of three times the commercial value of the
35 deficiency, if such deficiency in any one plant nutrient is more than
36 two percent under guarantee on any one commercial fertilizer in which
37 that plant nutrient is guaranteed up to and including ten percent; a
38 penalty of three times the commercial value of the deficiency, if such

1 deficiency in any one plant nutrient is more than three percent under
2 guarantee on any one commercial fertilizer in which that plant nutrient
3 is guaranteed from ten and one-tenth percent to twenty percent; a
4 penalty of three times the commercial value of the deficiency, if such
5 deficiency in any one plant nutrient is more than four percent under
6 guarantee on any one commercial fertilizer in which that plant nutrient
7 is guaranteed twenty and one-tenth percent and above.

8 (b) A penalty of three times the commercial value of the total
9 nutrient deficiency shall be assessed when such deficiency is more than
10 two percent under the calculated total nutrient guarantee.

11 (c) When a commercial fertilizer is subject to penalty under both
12 (a) and (b) (~~above~~) of this subsection, only the larger penalty shall
13 be assessed.

14 (2) All penalties assessed under this section on any one commercial
15 fertilizer, represented by the sample analyzed, shall be paid to the
16 department within three months after the date of notice from the
17 department to the registrant or licensee. The department shall deposit
18 the amount of the penalty into (~~the fertilizer, agricultural mineral~~
19 ~~and lime account~~) an account with the agricultural local fund.

20 (3) Nothing contained in this section shall prevent any person from
21 appealing to a court of competent jurisdiction for a judgment as to the
22 justification of such penalties imposed under subsections (1) and (2)
23 (~~above~~) of this section.

24 (4) The civil penalties payable in subsections (1) and (2)
25 (~~above~~) of this section shall in no manner be construed as limiting
26 the consumer's right to bring a civil action in damage against the
27 registrant or licensee paying said civil penalties.

28 **Sec. 10.** RCW 15.54.414 and 1993 c 183 s 10 are each amended to
29 read as follows:

30 No person may distribute an adulterated commercial fertilizer. A
31 commercial fertilizer is adulterated:

32 (1) If it contains any deleterious or harmful (~~ingredient~~)
33 substance in sufficient amount to render it injurious to beneficial
34 plant life when applied in accordance with directions for use on the
35 label, or if adequate warning statements or directions for use which
36 may be necessary to protect plant life are not shown upon the label;

37 (2) If its composition falls below or differs from that which it is
38 purported to possess by its labeling; (~~or~~)

- 1 (3) If it contains unwanted viable seed; or
2 (4) If the concentration of any nonnutritive constituent in a
3 representative sample of commercial fertilizer exceeds the maximum
4 concentration stated on the registration application or on the label.

5 **Sec. 11.** RCW 15.54.420 and 1993 c 183 s 11 are each amended to
6 read as follows:

7 It shall be unlawful for any person to:

8 (1) Distribute an adulterated or misbranded commercial fertilizer;

9 (2) Fail, refuse, or neglect to place upon or attach to each
10 package of distributed commercial fertilizer a label containing all of
11 the information required by this chapter;

12 (3) Fail, refuse, or neglect to deliver to a purchaser of bulk
13 commercial fertilizer a statement containing the information required
14 by this chapter;

15 (4) Distribute a (~~packaged~~) commercial fertilizer product which
16 has not been registered with the department;

17 (5) Distribute bulk fertilizer without holding a license to do so;

18 (~~(6) (Distribute unregistered packaged fertilizer. It is the~~
19 ~~responsibility of the person who manufactures or subsequently packages~~
20 ~~that fertilizer to register it prior to distribution in this state;~~

21 ~~(7))~~) Refuse or neglect to keep and maintain records, or to make
22 reports when and as required; or

23 (~~(8))~~) (7) Make false or fraudulent applications, records,
24 invoices, or reports.

25 **Sec. 12.** RCW 15.54.436 and 1993 c 183 s 12 are each amended to
26 read as follows:

27 The department may cancel the license to distribute commercial
28 fertilizer or registration of any (~~packaged~~) commercial fertilizer
29 product or refuse to license a distributor or register any (~~packaged~~)
30 commercial fertilizer product as provided in this chapter due to:

31 (1) An incomplete or insufficient license or registration
32 application;

33 (2) The misbranding or adulteration of a commercial fertilizer; or

34 (3) A violation of this chapter or rules adopted under this
35 chapter.

36 If the department cancels or refuses to renew an existing license
37 or registration due to the misbranding or adulteration of a commercial

1 fertilizer or due to a violation of this chapter or a rule adopted
2 hereunder, the licensee/registrant or applicant may request a hearing
3 as provided for in chapter 34.05 RCW.

4 **Sec. 13.** RCW 15.54.470 and 1993 c 183 s 13 are each amended to
5 read as follows:

6 (1) Any person who violates any provision of this chapter shall be
7 guilty of a misdemeanor, and the fines collected shall be disposed of
8 as provided under RCW 15.54.480.

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

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

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

29 **Sec. 14.** RCW 15.54.474 and 1987 c 45 s 10 are each amended to read
30 as follows:

31 Every person who fails to comply with this chapter, or any rule
32 adopted under it, may be subjected to a civil penalty, as determined by
33 the director, in an amount of not more than (~~one~~) seven thousand five
34 hundred dollars for every such violation. Each and every such
35 violation shall be a separate and distinct offense. Every person, who,
36 through an act of commission or omission, procures, aids, or abets in

1 the violation shall be considered to have violated this chapter and may
2 be subject to the penalty provided for in this section.

3 **Sec. 15.** RCW 15.54.480 and 1988 c 254 s 3 are each amended to read
4 as follows:

5 (1) Except as provided in subsection (2) of this section, all
6 moneys collected under the provisions of this chapter shall be paid to
7 the director and deposited in an account within the agricultural local
8 fund. Such deposits shall be used only in the administration and
9 enforcement of this chapter. Any residual balance remaining in the
10 fertilizer, agricultural mineral and lime fund on June 9, 1988, shall
11 be transferred to that account within the agricultural local fund.

12 (2) Moneys collected under RCW 15.54.474 shall be deposited in the
13 general fund.

14 NEW SECTION. **Sec. 16.** The department of agriculture shall conduct
15 a comprehensive study of plant uptake of metals. The department shall
16 work cooperatively with the department of ecology and the department of
17 health to interpret the study results regarding potential impacts to
18 public and environmental health. A report of the results of the study
19 shall be submitted to appropriate committees of the legislature by
20 December 31, 2000.

21 **Sec. 17.** RCW 15.54.800 and 1997 c 427 s 3 are each amended to read
22 as follows:

23 (1) The director shall administer and enforce the provisions of
24 this chapter and any rules adopted under this chapter. All authority
25 and requirements provided for in chapter 34.05 RCW apply to this
26 chapter in the adoption of rules.

27 (2) The director may adopt appropriate rules for carrying out the
28 purpose and provisions of this chapter, including but not limited to
29 rules providing for:

30 (a) Definitions of terms;

31 (b) Determining standards for labeling and registration of
32 commercial fertilizers;

33 (c) The collection and examination of commercial fertilizers;

34 (d) Recordkeeping by registrants and licensees;

35 (e) Regulation of the use and disposal of commercial fertilizers
36 for the protection of ground water and surface water; and

1 (f) The safe handling, transportation, storage, display, and
2 distribution of commercial fertilizers.

3 (3) Standards are established for allowable levels of nonnutritive
4 substances in commercial fertilizers. These standards are Canadian
5 figures for agricultural and agri-food Canadian maximum acceptable
6 cumulative metal additions to soil established under Trade Memorandum
7 T-4-93 dated August 1996. These standards may be revised by rule if
8 federal or other risk-based standards are adopted or scientific, peer-
9 reviewed studies have shown that these standards are not at the
10 appropriate level to protect human health and the environment.
11 Washington application rates shall be used to ensure that the maximum
12 acceptable cumulative metal additions to soil are not exceeded.

13 NEW SECTION. Sec. 18. A new section is added to chapter 15.54 RCW
14 to read as follows:

15 (1) After receipt from the department of the completed application
16 required by RCW 15.54.325, the department of ecology shall evaluate
17 whether the use of the proposed waste-derived fertilizer or the
18 micronutrient fertilizer as defined in RCW 15.54.270 is consistent with
19 the following:

- 20 (a) Chapter 70.95 RCW, the solid waste management act;
- 21 (b) Chapter 70.105 RCW, the hazardous waste management act; and
- 22 (c) 42 U.S.C. chapter 82, subtitles C and D, the resource
23 conservation and recovery act.

24 (2) The department of ecology shall apply the standards adopted in
25 RCW 15.54.800. If more stringent standards apply under chapter 173-303
26 WAC for the same constituents, the department of ecology must use the
27 more stringent standards.

28 (3) Within sixty days of receiving the completed application, the
29 department of ecology shall advise the department as to whether the
30 application complies with the requirements of subsections (1) and (2)
31 of this section. In making a determination, the department of ecology
32 shall consult with the department of health and the department of labor
33 and industries.

34 (4) A party aggrieved by a decision of the department of ecology to
35 issue a written approval under this section or to deny the issuance of
36 such an approval may appeal the decision to the pollution control
37 hearings board within thirty days of the decision. Review of such a
38 decision shall be conducted in accordance with chapter 43.21B RCW. Any

1 subsequent appeal of a decision of the hearings board shall be obtained
2 in accordance with RCW 43.21B.180.

3 **Sec. 19.** RCW 70.95.030 and 1997 c 213 s 1 are each amended to read
4 as follows:

5 As used in this chapter, unless the context indicates otherwise:

6 (1) "City" means every incorporated city and town.

7 (2) "Commission" means the utilities and transportation commission.

8 (3) "Committee" means the state solid waste advisory committee.

9 (4) "Composted material" means organic solid waste that has been
10 subjected to controlled aerobic degradation at a solid waste facility
11 in compliance with the requirements of this chapter. Natural decay of
12 organic solid waste under uncontrolled conditions does not result in
13 composted material.

14 ~~(5)~~ (5) "Department" means the department of ecology.

15 ~~((+5))~~ (6) "Director" means the director of the department of
16 ecology.

17 ~~((+6))~~ (7) "Disposal site" means the location where any final
18 treatment, utilization, processing, or deposit of solid waste occurs.

19 ~~((+7))~~ (8) "Energy recovery" means a process operating under
20 federal and state environmental laws and regulations for converting
21 solid waste into usable energy and for reducing the volume of solid
22 waste.

23 ~~((+8))~~ (9) "Functional standards" means criteria for solid waste
24 handling expressed in terms of expected performance or solid waste
25 handling functions.

26 ~~((+9))~~ (10) "Incineration" means a process of reducing the volume
27 of solid waste operating under federal and state environmental laws and
28 regulations by use of an enclosed device using controlled flame
29 combustion.

30 ~~((+10))~~ (11) "Jurisdictional health department" means city,
31 county, city-county, or district public health department.

32 ~~((+11))~~ (12) "Landfill" means a disposal facility or part of a
33 facility at which solid waste is placed in or on land and which is not
34 a land treatment facility.

35 ~~((+12))~~ (13) "Local government" means a city, town, or county.

36 ~~((+13))~~ (14) "Modify" means to substantially change the design or
37 operational plans including, but not limited to, removal of a design

1 element previously set forth in a permit application or the addition of
2 a disposal or processing activity that is not approved in the permit.

3 ~~((14))~~ (15) "Multiple family residence" means any structure
4 housing two or more dwelling units.

5 ~~((15))~~ (16) "Person" means individual, firm, association,
6 copartnership, political subdivision, government agency, municipality,
7 industry, public or private corporation, or any other entity
8 whatsoever.

9 ~~((16))~~ (17) "Recyclable materials" means those solid wastes that
10 are separated for recycling or reuse, such as papers, metals, and
11 glass, that are identified as recyclable material pursuant to a local
12 comprehensive solid waste plan. Prior to the adoption of the local
13 comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2),
14 local governments may identify recyclable materials by ordinance from
15 July 23, 1989.

16 ~~((17))~~ (18) "Recycling" means transforming or remanufacturing
17 waste materials into usable or marketable materials for use other than
18 landfill disposal or incineration.

19 ~~((18))~~ (19) "Residence" means the regular dwelling place of an
20 individual or individuals.

21 ~~((19))~~ (20) "Sewage sludge" means a semisolid substance
22 consisting of settled sewage solids combined with varying amounts of
23 water and dissolved materials, generated from a wastewater treatment
24 system, that does not meet the requirements of chapter 70.95J RCW.

25 ~~((20))~~ (21) "Soil amendment" means any substance that is intended
26 to improve the physical characteristics of the soil, except composted
27 material, commercial fertilizers, agricultural liming agents,
28 unmanipulated animal manures, unmanipulated vegetable manures, food
29 wastes, food processing wastes, and materials exempted by rule of the
30 department, such as biosolids as defined in chapter 70.95J RCW and
31 wastewater as regulated in chapter 90.48 RCW.

32 (22) "Solid waste" or "wastes" means all putrescible and
33 nonputrescible solid and semisolid wastes including, but not limited
34 to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge,
35 demolition and construction wastes, abandoned vehicles or parts
36 thereof, and recyclable materials.

37 ~~((21))~~ (23) "Solid waste handling" means the management, storage,
38 collection, transportation, treatment, utilization, processing, and
39 final disposal of solid wastes, including the recovery and recycling of

1 materials from solid wastes, the recovery of energy resources from
2 solid wastes or the conversion of the energy in solid wastes to more
3 useful forms or combinations thereof.

4 (~~((22))~~) (24) "Source separation" means the separation of different
5 kinds of solid waste at the place where the waste originates.

6 (~~((23))~~) (25) "Vehicle" includes every device physically capable of
7 being moved upon a public or private highway, road, street, or
8 watercourse and in, upon, or by which any person or property is or may
9 be transported or drawn upon a public or private highway, road, street,
10 or watercourse, except devices moved by human or animal power or used
11 exclusively upon stationary rails or tracks.

12 (~~((24))~~) (26) "Waste-derived soil amendment" means any soil
13 amendment as defined in this chapter that is derived from solid waste
14 as defined in RCW 70.95.030, but does not include biosolids or
15 biosolids products regulated under chapter 70.95J RCW or wastewaters
16 regulated under chapter 90.48 RCW.

17 (27) "Waste reduction" means reducing the amount or toxicity of
18 waste generated or reusing materials.

19 NEW SECTION. Sec. 20. A new section is added to chapter 70.95 RCW
20 to read as follows:

21 (1) Waste-derived soil amendments that meet the standards and
22 criteria in this section may apply for exemption from solid waste
23 permitting as required under RCW 70.95.170. The application shall be
24 submitted to the department in a format determined by the department or
25 an equivalent format. The application shall include:

26 (a) Analytical data showing that the waste-derived soil amendments
27 meet standards established under RCW 15.54.800; and

28 (b) Other information deemed appropriate by the department to
29 protect human health and the environment.

30 (2) After receipt of an application, the department shall review it
31 to determine whether the application is complete, and forward a copy of
32 the complete application to all interested jurisdictional health
33 departments for review and comment. Within forty-five days, the
34 jurisdictional health departments shall forward their comments and any
35 other information they deem relevant to the department, which shall
36 then give final approval or disapproval of the application. Every
37 complete application shall be approved or disapproved by the department
38 within ninety days after receipt.

1 (3) The department, after providing opportunity for comments from
2 the jurisdictional health departments, may at any time revoke an
3 exemption granted under this section if the quality or use of the
4 waste-derived soil amendment changes or the management, storage, or end
5 use of the waste-derived soil amendment constitutes a threat to human
6 health or the environment.

7 (4) Any aggrieved party may appeal the determination by the
8 department in subsection (2) or (3) of this section to the pollution
9 control hearings board.

10 **Sec. 21.** RCW 70.95.240 and 1997 c 427 s 4 are each amended to read
11 as follows:

12 (1) After the adoption of regulations or ordinances by any county,
13 city, or jurisdictional board of health providing for the issuance of
14 permits as provided in RCW 70.95.160, it shall be unlawful for any
15 person to dump or deposit or permit the dumping or depositing of any
16 solid waste onto or under the surface of the ground or into the waters
17 of this state except at a solid waste disposal site for which there is
18 a valid permit. This section (~~shall~~) does not:

19 (a) Prohibit a person from dumping or depositing solid waste
20 resulting from his or her own activities onto or under the surface of
21 ground owned or leased by him or her when such action does not violate
22 statutes or ordinances, or create a nuisance; (~~or~~)

23 (b) (~~Apply to a person using a material or materials on the land~~
24 ~~as commercial fertilizer if (i) the department of ecology has issued~~
25 ~~written approval for the use of the material or materials as commercial~~
26 ~~fertilizer as provided in RCW 70.95.830, (ii) the registration of the~~
27 ~~material or materials as a packaged commercial fertilizer has not been~~
28 ~~canceled under RCW 15.54.335, and (iii) the distribution of the~~
29 ~~material or materials as a commercial fertilizer has not been~~
30 ~~prohibited by the department of agriculture under RCW 15.54.335)) Apply
31 to a person using a waste-derived soil amendment that has been approved
32 by the department under section 20 of this act; or~~

33 (c) Apply to the application of commercial fertilizer that has been
34 registered with the department of agriculture as provided in RCW
35 15.54.325, and that is applied in accordance with the standards
36 established in RCW 15.54.800(3).

1 (2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120
2 for a person to litter in an amount less than or equal to one cubic
3 foot.

4 (b) It is a class 1 civil infraction as defined in RCW 7.80.120 for
5 a person to litter in an amount greater than one cubic foot. Unless
6 suspended or modified by a court, the person shall also pay a litter
7 cleanup fee of twenty-five dollars per cubic foot of litter. The court
8 may, in addition to or in lieu of part or all of the cleanup fee, order
9 the person to pick up and remove litter from the property, with prior
10 permission of the legal owner or, in the case of public property, of
11 the agency managing the property.

12 NEW SECTION. **Sec. 22.** The department of ecology, in conjunction
13 with the departments of agriculture and health, shall undertake a study
14 of whether dioxins occur in fertilizers, soil amendments, and soils and
15 if so, at what levels. The department of ecology shall seek additional
16 financial and technical assistance from appropriate federal agencies,
17 the fertilizer industry, and other appropriate sources in conducting
18 this study. The department of ecology shall report its findings to the
19 legislature in November 1998.

20 NEW SECTION. **Sec. 23.** A new section is added to chapter 15.54 RCW
21 to read as follows:

22 (1) The department shall expand its fertilizer data base to include
23 additional information required for registration under RCW 15.54.325
24 and 15.54.330.

25 (2) Except for confidential information under RCW 15.54.362
26 regarding fertilizer tonnages distributed in the state, information in
27 the fertilizer data base shall be made available to the public upon
28 request.

29 (3) The department, and the department of ecology in consultation
30 with the department of health, shall biennially prepare a report to the
31 legislature presenting information on levels of nonnutritive substances
32 in fertilizers. Results from agency testing of products that were
33 sampled shall also be displayed. The first such report will be
34 provided to the legislature by December 1, 1999.

35 NEW SECTION. **Sec. 24.** The following acts or parts of acts are
36 each repealed:

1 (1) RCW 15.54.335 and 1997 c 427 s 2; and

2 (2) RCW 70.95.830 and 1997 c 427 s 5.

3 NEW SECTION. **Sec. 25.** This act may be known and cited as the
4 fertilizer regulation act.

5 NEW SECTION. **Sec. 26.** If specific funding for the purposes of
6 this act, referencing this act by bill or chapter number, is not
7 provided by June 30, 1998, in the omnibus appropriations act, this act
8 is null and void.

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