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HOUSE BILL 2618

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State of Washington

55th Legislature

1998 Regular Session

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

Read first time 01/16/98. Referred to Committee on Agriculture & Ecology.

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 15.54.370, 15.54.380, 15.54.414, 15.54.420, 15.54.436, 15.54.470,  
4 15.54.474, 15.54.480, 15.54.800, 70.95.030, 70.95.170, 70.95.210, and  
5 70.95.240; adding new sections to chapter 70.95 RCW; adding a new  
6 section to chapter 70.105 RCW; adding a new section to chapter 15.54  
7 RCW; creating new sections; repealing RCW 15.54.335 and 70.95.830;  
8 prescribing penalties; and making an appropriation.

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

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

13 (1) Ensuring that all fertilizers meet standards for allowable  
14 metals;

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

17 (3) Clarifying the department of ecology's oversight authority over  
18 waste-derived fertilizers; and

19 (4) Authorizing additional studies on plant uptake of metals.

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

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

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

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

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

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

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

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

27       (7) "Director" means the director of the department of agriculture.

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

32       (9) "Distributor" means a person who distributes.

33       (10) "Fertilizer material" means a commercial fertilizer that  
34 either:

35       (a) Contains important quantities of no more than one of the  
36 primary plant nutrients: Nitrogen (N), phosphate (P2O5), and potash  
37 (K2O);

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

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

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

13 (~~(11)~~) (12) "Guaranteed analysis."

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

18	Total nitrogen (N)	. . . . .	percent
19	Available phosphoric acid (P205)	. .	percent
20	Soluble potash (K20)	. . . . .	percent

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

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

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

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

32 (d) The guaranteed analysis for limes shall include the percentage  
33 of calcium or magnesium expressed as their carbonate; the calcium  
34 carbonate equivalent as determined by methods prescribed by the  
35 association of official analytical chemists; and the minimum percentage  
36 of material that will pass respectively a one hundred mesh, sixty mesh,  
37 and ten mesh sieve. The mesh size declaration may also include the  
38 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  
3 (CaSO<sub>4</sub>.2H<sub>2</sub>O) shall be given along with the percentage of total sulfur.

4 ~~((f) The guaranteed analysis for a material approved under RCW  
5 70.95.830 and to be used as a soil amendment shall include the name and  
6 percentage of each soil amending ingredient and the total percentage of  
7 all other ingredients.~~

8 ~~(12))~~ (13) "Label" means the display of all written, printed, or  
9 graphic matter, upon the immediate container, or a statement  
10 accompanying a fertilizer.

11 ~~((13))~~ (14) "Labeling" includes all written, printed, or graphic  
12 matter, upon or accompanying a commercial fertilizer, or advertisement,  
13 brochures, posters, television, and radio announcements used in  
14 promoting the sale of such fertilizer.

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

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

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

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

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

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

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

31 (21) "Percent" or "percentage" means the percentage by weight.

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

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

38 (24) "Ton" means the net weight of two thousand pounds avoirdupois.

1 (25) "Total nutrients" means the sum of the percentages of total  
2 nitrogen, available phosphoric acid, and soluble potash as guaranteed  
3 and as determined by analysis.

4 (26) "Waste-derived fertilizer" means a commercial fertilizer that  
5 is derived from an industrial byproduct, coproduct, or other material  
6 that would otherwise be disposed of if a market for reuse was not an  
7 option. This includes solid waste as defined in chapter 70.95 RCW and  
8 hazardous waste as defined in chapter 70.105 RCW, but does not include  
9 biosolids or biosolids products regulated under chapter 70.95J RCW or  
10 wastewaters regulated under chapter 90.48 RCW.

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

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

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

23 (a) The name and address of licensee.

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

25 (3) (~~The name and address shown on the license shall be shown on~~  
26 ~~all labels, pertinent invoices, and storage facilities for fertilizer~~  
27 ~~distributed by the licensee in this state.~~

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

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

3       (1) No person may distribute in this state a ~~((packaged))~~  
4 commercial fertilizer until it is registered with the department by the  
5 distributor whose name appears on the label. An application for each  
6 ~~((packaged))~~ commercial fertilizer product shall be made on a form  
7 furnished by the department and shall be accompanied by an initial fee  
8 of twenty-five dollars for ~~((the first))~~ each product ~~((and ten dollars~~  
9 ~~for each additional product))~~. Labels for each product shall accompany  
10 the application. All companies planning to mix ~~((packaged))~~ customer-  
11 formula fertilizers shall include the statement "customer-formula grade  
12 mixes" under the column headed "product name" on the product  
13 registration application form. All customer-formula fertilizers sold  
14 under one brand name shall be considered one product. Upon the  
15 approval of an application by the department, a copy of the  
16 registration shall be furnished to the applicant. All registrations  
17 expire on June 30th of each year ~~((except that for the period beginning~~  
18 ~~January 1, 1994, the registration shall expire on June 30, 1995))~~.

19       (2) An application for registration shall include the following:

20       (a) The product name;

21       (b) The brand and grade;

22       (c) The guaranteed analysis;

23       (d) Name and address of the registrant;

24       (e) Labels for each product being registered;

25       (f) Identification of those products defined as waste-derived  
26 fertilizers;

27       (g) In the case of waste-derived fertilizers and fertilizer  
28 materials containing phosphate, the application must include the  
29 concentration of each metal listed in rule adopted under RCW  
30 15.54.800(2)(g); and

31       (h) Any other information required by the department by rule.

32       (3) Before registration of a commercial fertilizer that is defined  
33 as a waste-derived fertilizer, the department shall obtain written  
34 approval from the department of ecology as provided in section 20 or 21  
35 of this act. For those commercial fertilizers registered or allowed to  
36 be distributed under a bulk distribution license before the effective  
37 date of this section, for the period from July 1, 1998, through June  
38 30, 1999, registration may be granted without the approval process in  
39 this subsection.

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

11       (5) For the period beginning July 1, 1998, and ending July 1, 1999,  
12 a surcharge of twelve dollars shall be collected with each registration  
13 fee.

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

16       (1) The department shall examine the ((packaged)) commercial  
17 fertilizer product registration application form and labels for  
18 conformance with the requirements of this chapter. If the application  
19 and appropriate labels are in proper form and contain the required  
20 information, the particular ((packaged)) commercial fertilizer products  
21 shall be registered by the department and a certificate of registration  
22 shall be issued to the applicant.

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

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

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

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

7       (a) The net weight;

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

10       (c) The guaranteed analysis;

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

14       (e) A list of contents subject to the standards in RCW  
15 15.54.800(2)(g);

16       (f) A statement that the product meets the standard adopted under  
17 RCW 15.54.800(2)(g);

18       (g) A statement regarding the maximum allowable level of metals if  
19 applied as directed; and

20       (h) Other information as required by the department by rule.

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

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



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

3       (1) There shall be paid to the department for all commercial  
4 fertilizers distributed in this state to nonregistrants (~~or~~  
5 ~~nonlicensees~~) an inspection fee of (~~fifteen~~) twenty-five cents per  
6 ton of lime and thirty-six cents per ton of all other commercial  
7 fertilizer distributed during the year beginning July 1st and ending  
8 June 30th.

9       (2) Distribution of commercial fertilizers for shipment to points  
10 outside this state may be excluded.

11       (3) When more than one distributor is involved in the distribution  
12 of a commercial fertilizer, the last registrant (~~or licensee~~) who  
13 distributes to a nonregistrant (~~or nonlicensee~~) is responsible for  
14 paying the inspection fee, unless the payment of fees has been made by  
15 a prior distributor of the fertilizer.

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

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

31       (2) Each person responsible for the payment of inspection fees for  
32 commercial fertilizer distributed in this state shall include the  
33 inspection fees with the report on the same dates and for the same  
34 reporting periods mentioned in subsection (1) of this section. If in  
35 one year a registrant (~~or licensee~~) distributes less than eighty-  
36 three tons of commercial fertilizer or less than one hundred sixty-  
37 seven tons of commercial lime or equivalent combination of the two, the

1 registrant (~~or licensee~~) shall pay the minimum inspection fee. The  
2 minimum inspection fee shall be twenty-five dollars per year.

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

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

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

23 **Sec. 9.** RCW 15.54.370 and 1993 c 183 s 8 are each amended to read  
24 as follows:

25 (1) It shall be the duty of the department to inspect, sample, make  
26 analysis of, and test commercial fertilizers distributed within this  
27 state at such time and place and to such an extent as it may deem  
28 necessary to determine whether such fertilizers are in compliance with  
29 the provisions of this chapter. The department is authorized to stop  
30 any commercial vehicle transporting fertilizers on the public highways  
31 and direct it to the nearest scales approved by the department to check  
32 weights of fertilizers being delivered. The department is also  
33 authorized, upon presentation of proper identification, to enter any  
34 distributor's premises, including any vehicle of transport, at all  
35 reasonable times in order to have access to commercial fertilizers and  
36 to records relating to their distribution.

37 (2) The methods of sampling and analysis shall be those adopted by  
38 the department from officially recognized sources.

1 (3) The department, in determining for administrative purposes  
2 whether a fertilizer is deficient in any component or total nutrients,  
3 shall be guided solely by the official sample as defined in RCW  
4 15.54.270 and obtained and analyzed as provided for in this section.

5 (4) When the inspection and analysis of an official sample has been  
6 made, the results of analysis shall be forwarded by the department to  
7 the registrant ((~~or licensee~~)) and to the purchaser, if known. Upon  
8 request and within thirty days, the department shall furnish to the  
9 registrant ((~~or licensee~~)) a portion of the sample concerned.

10 (5) Analysis of an official sample by the department shall be  
11 accepted as prima facie evidence by any court of competent  
12 jurisdiction.

13 **Sec. 10.** RCW 15.54.380 and 1993 c 183 s 9 are each amended to read  
14 as follows:

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

19 (a) A penalty of three times the commercial value of the  
20 deficiency, if such deficiency in any one plant nutrient is more than  
21 two percent under guarantee on any one commercial fertilizer in which  
22 that plant nutrient is guaranteed up to and including ten percent; a  
23 penalty of three times the commercial value of the deficiency, if such  
24 deficiency in any one plant nutrient is more than three percent under  
25 guarantee on any one commercial fertilizer in which that plant nutrient  
26 is guaranteed from ten and one-tenth percent to twenty percent; a  
27 penalty of three times the commercial value of the deficiency, if such  
28 deficiency in any one plant nutrient is more than four percent under  
29 guarantee on any one commercial fertilizer in which that plant nutrient  
30 is guaranteed twenty and one-tenth percent and above.

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

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

37 (2) All penalties assessed under this section on any one commercial  
38 fertilizer, represented by the sample analyzed, shall be paid to the

1 department within three months after the date of notice from the  
2 department to the registrant ((or licensee)). The department shall  
3 deposit the amount of the penalty into the fertilizer, agricultural  
4 mineral and lime account.

5 (3) Nothing contained in this section shall prevent any person from  
6 appealing to a court of competent jurisdiction for a judgment as to the  
7 justification of such penalties imposed under subsections (1) and (2)  
8 ((above)) of this section.

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

13 **Sec. 11.** RCW 15.54.414 and 1993 c 183 s 10 are each amended to  
14 read as follows:

15 No person may distribute an adulterated commercial fertilizer. A  
16 commercial fertilizer is adulterated:

17 (1) If it contains any deleterious or harmful ingredient in  
18 sufficient amount to render it injurious to beneficial plant life,  
19 animals, humans, aquatic life, soil, or water when applied in  
20 accordance with directions for use on the label, or if adequate warning  
21 statements or directions for use which may be necessary to protect  
22 plant life, animals, humans, aquatic life, soil, or water are not shown  
23 upon the label. However, any commercial fertilizer containing metals  
24 subject to the rule adopted under RCW 15.54.800(2)(g) shall not be  
25 considered adulterated for those metals if the commercial fertilizer  
26 complies with the standard established for those metals. In making  
27 such a determination, the department may confer with appropriate  
28 federal and state agencies and institutions;

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

31 (3) If it contains unwanted viable seed.

32 **Sec. 12.** RCW 15.54.420 and 1993 c 183 s 11 are each amended to  
33 read as follows:

34 It shall be unlawful for any person to:

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

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

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

7 (4) Distribute a ((packaged)) commercial fertilizer product which  
8 has not been registered with the department;

9 ~~(5) ((Distribute bulk fertilizer without holding a license to do  
10 so;~~

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

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

16 ~~((8))~~ (6) Make false or fraudulent records, invoices, or reports.

17 **Sec. 13.** RCW 15.54.436 and 1993 c 183 s 12 are each amended to  
18 read as follows:

19 The department may cancel the ~~((license to distribute commercial  
20 fertilizer or))~~ registration of any ~~((packaged))~~ commercial fertilizer  
21 product or refuse to ~~((license a distributor or))~~ register any  
22 ~~((packaged))~~ commercial fertilizer product as provided in this chapter  
23 due to:

24 (1) An incomplete or insufficient ~~((license or))~~ registration  
25 application;

26 (2) The misbranding or adulteration of a commercial fertilizer;  
27 ~~((or))~~

28 (3) Evidence that the use of a waste-derived fertilizer poses  
29 unacceptable hazards to human health or the environment; or

30 (4) A violation of this chapter or rules adopted under this  
31 chapter.

32 If the department cancels or refuses to renew an existing ~~((license  
33 or))~~ registration due to the misbranding or adulteration of a  
34 commercial fertilizer or due to a violation of this chapter or a rule  
35 adopted hereunder, the ~~((licensee/registrant))~~ registrant or applicant  
36 may request a hearing as provided for in chapter 34.05 RCW.

1       **Sec. 14.** RCW 15.54.470 and 1993 c 183 s 13 are each amended to  
2 read as follows:

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

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

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

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

26       **Sec. 15.** RCW 15.54.474 and 1987 c 45 s 10 are each amended to read  
27 as follows:

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

36       **Sec. 16.** RCW 15.54.480 and 1988 c 254 s 3 are each amended to read  
37 as follows:

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

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

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

17       **Sec. 18.** RCW 15.54.800 and 1997 c 427 s 3 are each amended to read  
18 as follows:

19       (1) The director shall administer and enforce the provisions of  
20 this chapter and any rules adopted under this chapter. All authority  
21 and requirements provided for in chapter 34.05 RCW apply to this  
22 chapter in the adoption of rules.

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

26       (a) Definitions of terms;

27       (b) Determining standards for labeling and registration of  
28 commercial fertilizers;

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

30       (d) Recordkeeping by registrants and licensees;

31       (e) Regulation of the use and disposal of commercial fertilizers  
32 for the protection of ground water and surface water; ~~((and))~~

33       (f) The safe handling, transportation, storage, display, and  
34 distribution of commercial fertilizers; and

35       (g) Establishing standards for allowable levels of nonnutritive  
36 metals in commercial fertilizers. Until such time that federal risk-  
37 based standards are adopted or studies have shown that these standards

1 are not adequate to protect human health and the environment, the  
2 department shall use Canadian figures for maximum acceptable metal  
3 concentrations in products and maximum acceptable cumulative metal  
4 additions to soil as specified in the Canadian fertilizers act, R.S.,  
5 c. F-9, as amended before the effective date of this section, and rules  
6 adopted under that act. Washington application rates shall be used to  
7 determine if maximum acceptable cumulative metal additions to soil are  
8 being exceeded.

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

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

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

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

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

15       (4) "Department" means the department of ecology.

16       (5) "Director" means the director of the department of ecology.

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

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

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

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

29       (10) "Jurisdictional health department" means city, county, city-  
30 county, or district public health department.

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

34       (12) "Local government" means a city, town, or county.

35       (13) "Modify" means to substantially change the design or  
36 operational plans including, but not limited to, removal of a design  
37 element previously set forth in a permit application or the addition of  
38 a disposal or processing activity that is not approved in the permit.



1 (14) "Multiple family residence" means any structure housing two or  
2 more dwelling units.

3 (15) "Person" means individual, firm, association, copartnership,  
4 political subdivision, government agency, municipality, industry,  
5 public or private corporation, or any other entity whatsoever.

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

13 (17) "Recycling" means transforming or remanufacturing waste  
14 materials into usable or marketable materials for use other than  
15 landfill disposal or incineration.

16 (18) "Residence" means the regular dwelling place of an individual  
17 or individuals.

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

22 (20) "Soil amendment" means any substance that is intended to  
23 improve the physical characteristics of the soil, except commercial  
24 fertilizers, agricultural liming agents, unmanipulated animal manures,  
25 unmanipulated vegetable manures, and other materials exempted by rule  
26 of the department, such as biosolids as defined in this chapter and  
27 wastewater as regulated in chapter 90.48 RCW.

28 (21) "Solid waste" or "wastes" means all putrescible and  
29 nonputrescible solid and semisolid wastes including, but not limited  
30 to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge,  
31 demolition and construction wastes, abandoned vehicles or parts  
32 thereof, and recyclable materials.

33 ((+21+)) (22) "Solid waste handling" means the management, storage,  
34 collection, transportation, treatment, utilization, processing, and  
35 final disposal of solid wastes, including the recovery and recycling of  
36 materials from solid wastes, the recovery of energy resources from  
37 solid wastes or the conversion of the energy in solid wastes to more  
38 useful forms or combinations thereof.

1       (~~((22))~~) (23) "Source separation" means the separation of different  
2 kinds of solid waste at the place where the waste originates.

3       (~~((23))~~) (24) "Vehicle" includes every device physically capable of  
4 being moved upon a public or private highway, road, street, or  
5 watercourse and in, upon, or by which any person or property is or may  
6 be transported or drawn upon a public or private highway, road, street,  
7 or watercourse, except devices moved by human or animal power or used  
8 exclusively upon stationary rails or tracks.

9       (~~((24))~~) (25) "Waste-derived soil amendment" means any soil  
10 amendment as defined in this chapter that is derived from solid waste  
11 as defined in RCW 70.95.030, but does not include biosolids or  
12 biosolids products regulated under chapter 70.95J RCW or wastewaters  
13 regulated under chapter 90.48 RCW.

14       (26) "Waste reduction" means reducing the amount or toxicity of  
15 waste generated or reusing materials.

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

18       (1) After receipt from the department of agriculture of a copy of  
19 the completed application required by RCW 15.54.325, the department  
20 shall evaluate whether the use of the proposed waste-derived fertilizer  
21 as defined in RCW 15.54.270 is consistent with the following and other  
22 applicable laws:

23       (a) This chapter;

24       (b) Chapter 70.105 RCW, the hazardous waste management act; and

25       (c) The biosolids standards set forth in rule or guidance under  
26 chapter 70.95J RCW.

27       (2) The department must accept the standards adopted in RCW  
28 15.54.800. If more stringent standards exist under chapter 173-303 WAC  
29 for the same constituents, the department must use the more stringent  
30 standards.

31       (3) The department shall review and approve or disapprove the use  
32 of the proposed waste-derived fertilizer within a reasonable time of  
33 receiving the completed application. In making a determination, the  
34 department shall consult with the department of health and the  
35 department of labor and industries.

36       (4) A party aggrieved by a decision of the department to issue a  
37 written approval under this section or to deny the issuance of such an  
38 approval may appeal the decision to the pollution control hearings

1 board within thirty days of the decision. Review of such a decision  
2 shall be conducted in accordance with chapter 43.21B RCW. Any  
3 subsequent appeal of a decision of the hearings board shall be obtained  
4 in accordance with RCW 43.21B.180.

5 NEW SECTION. **Sec. 21.** A new section is added to chapter 70.105  
6 RCW to read as follows:

7 (1) After receipt from the department of agriculture of a copy of  
8 the completed application required by RCW 15.54.325, the department  
9 shall evaluate whether the use of the proposed waste-derived fertilizer  
10 as defined in RCW 15.54.270 is consistent with the following and other  
11 applicable laws:

12 (a) Chapter 70.95 RCW;

13 (b) This chapter; and

14 (c) The biosolids standards set forth in rule or guidance under  
15 chapter 70.95J RCW.

16 (2) The department must accept the standards adopted in RCW  
17 15.54.800. If more stringent standards exist under chapter 173-303 WAC  
18 for the same constituents, the department must use the more stringent  
19 standards.

20 (3) The department shall review and approve or disapprove the use  
21 of the proposed waste-derived fertilizer within a reasonable time of  
22 receiving the completed application. In making a determination, the  
23 department shall consult with the department of health and the  
24 department of labor and industries.

25 (4) A party aggrieved by a decision of the department to issue a  
26 written approval under this section or to deny the issuance of such an  
27 approval may appeal the decision to the pollution control hearings  
28 board pursuant to RCW 43.21B.230.

29 **Sec. 22.** RCW 70.95.170 and 1997 c 213 s 2 are each amended to read  
30 as follows:

31 Except as provided in section 23 of this act, after approval of the  
32 comprehensive solid waste plan by the department no solid waste  
33 handling facility or facilities shall be maintained, established, or  
34 modified until the county, city, or other person operating such site  
35 has obtained a permit from the jurisdictional health department  
36 pursuant to the provisions of RCW 70.95.180 or 70.95.190.

1        NEW SECTION.    **Sec. 23.**    A new section is added to chapter 70.95 RCW  
2 to read as follows:

3        (1) Waste-derived soil amendments that meet the standards and  
4 criteria in this section may apply for exemption from solid waste  
5 permitting as required under RCW 70.95.170. The application shall be  
6 submitted to the jurisdictional health department in a format  
7 determined by the department or an equivalent format. The application  
8 shall include:

9        (a) Analytical data showing that all constituents of waste-derived  
10 soil amendments meet standards established under RCW 15.54.800;

11        (b) Other information deemed appropriate by the jurisdictional  
12 health department or the department to protect human health and the  
13 environment.

14        (2) Upon receipt of a complete application for exemption from solid  
15 waste permitting, the jurisdictional health department shall submit all  
16 applicable information to the department for review and concurrence  
17 before granting the exemption. The department shall review the  
18 application and provide its findings to the jurisdictional health  
19 department within forty-five days of receipt of the information. Every  
20 completed application shall be approved or disapproved by the  
21 jurisdictional health department within ninety days after receipt.

22        (3) The jurisdictional board of health may establish reasonable  
23 fees for the review of exemption applications. All permit fees  
24 collected by the health department shall be deposited in the treasury  
25 and to the account from which the health department's operating  
26 expenses are paid.

27        (4) The jurisdictional health department may contract with the  
28 department to fulfill the responsibilities of this section in  
29 accordance with RCW 70.95.163.

30        NEW SECTION.    **Sec. 24.**    A new section is added to chapter 70.95 RCW  
31 to read as follows:

32        The jurisdictional health department, with concurrence from the  
33 department, may at any time revoke an exemption granted under section  
34 23 of this act if the quality of the waste-derived soil amendment  
35 changes or the management, storage, or end use of the waste-derived  
36 soil amendment constitutes a threat to human health or the environment.

1       **Sec. 25.** RCW 70.95.210 and 1987 c 109 s 21 are each amended to  
2 read as follows:

3       (1) Whenever the jurisdictional health department denies a permit  
4 or suspends a permit for a solid waste disposal site or whenever the  
5 jurisdictional health department denies or revokes an exemption granted  
6 under section 23 of this act, it shall, upon request of the applicant  
7 or holder of the permit or exempted party, grant a hearing on such  
8 denial ~~((or))~~, suspension, or revocation within thirty days after the  
9 request therefor is made. Notice of the hearing shall be given to all  
10 interested parties including the county or city having jurisdiction  
11 over the site and the department. Within thirty days after the  
12 hearing, the health officer shall notify the applicant or the holder of  
13 the permit or exempted party in writing of his or her determination and  
14 the reasons therefor. Any party aggrieved by such determination may  
15 appeal to the pollution control hearings board by filing with the  
16 hearings board a notice of appeal within thirty days after receipt of  
17 notice of the determination of the health officer. The hearings board  
18 shall hold a hearing in accordance with the provisions of the  
19 Administrative Procedure Act, chapter 34.05 RCW(~~(, as now or hereafter~~  
20 ~~amended)~~)).

21       (2) Whenever the department has contracted with the jurisdictional  
22 health department in accordance with section 23(4) of this act and  
23 denies or revokes an exemption granted under section 23 of this act,  
24 any aggrieved party may appeal to the pollution control hearings board  
25 by filing with the hearings board a notice of appeal within thirty days  
26 after receipt of the notice of the determination of the department.  
27 The hearings board shall hold a hearing in accordance with the  
28 Administrative Procedure Act, chapter 34.05 RCW.

29       **Sec. 26.** RCW 70.95.240 and 1997 c 427 s 4 are each amended to read  
30 as follows:

31       (1) After the adoption of regulations or ordinances by any county,  
32 city, or jurisdictional board of health providing for the issuance of  
33 permits as provided in RCW 70.95.160, it shall be unlawful for any  
34 person to dump or deposit or permit the dumping or depositing of any  
35 solid waste onto or under the surface of the ground or into the waters  
36 of this state except at a solid waste disposal site for which there is  
37 a valid permit. This section ~~((shall))~~ does not(~~(÷~~

1       (a)) prohibit a person from dumping or depositing solid waste  
2 resulting from his or her own activities onto or under the surface of  
3 ground owned or leased by him or her when such action does not violate  
4 statutes or ordinances, or create a nuisance(~~(i) or~~

5       ~~(b) Apply to a person using a material or materials on the land as  
6 commercial fertilizer if (i) the department of ecology has issued  
7 written approval for the use of the material or materials as commercial  
8 fertilizer as provided in RCW 70.95.830, (ii) the registration of the  
9 material or materials as a packaged commercial fertilizer has not been  
10 canceled under RCW 15.54.335, and (iii) the distribution of the  
11 material or materials as a commercial fertilizer has not been  
12 prohibited by the department of agriculture under RCW 15.54.335)).~~

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

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

24       NEW SECTION. Sec. 27. A new section is added to chapter 15.54 RCW  
25 to read as follows:

26       (1) The department shall expand its fertilizer data base to include  
27 additional information on waste-derived products. Information shall be  
28 obtained from applications submitted under RCW 15.54.275.

29       (2) Except for confidential information under RCW 15.54.362  
30 regarding fertilizer tonnages distributed in the state, information in  
31 the fertilizer data base shall be made available to the public upon  
32 request.

33       NEW SECTION. Sec. 28. The following acts or parts of acts are  
34 each repealed:

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

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

1        NEW SECTION.    **Sec. 29.**    This act may be known and cited as the  
2 fertilizer regulation act.

3        NEW SECTION.    **Sec. 30.**    The sum of four hundred seven thousand  
4 seven hundred forty-seven dollars, or as much thereof as may be  
5 necessary, is appropriated for the fiscal year ending June 30, 1999,  
6 from the general fund to the department of agriculture for the purposes  
7 of this act.

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