

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6474

55th Legislature
1998 Regular Session

Passed by the Senate March 9, 1998
YEAS 35 NAYS 11

President of the Senate

Passed by the House March 4, 1998
YEAS 73 NAYS 24

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6474** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6474

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

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

Read first time 02/06/98.

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, 15.54.380, 15.54.414,
3 15.54.420, 15.54.436, 15.54.470, 15.54.474, 15.54.480, 15.54.800,
4 70.95.030, 70.95.240, and 43.21B.110; adding new sections to chapter
5 15.54 RCW; adding a new section to chapter 70.95 RCW; creating new
6 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, or 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 an
34 averaging period of up to four consecutive years that incorporates
35 agronomic rates that are representative of soil, crop rotation, and
36 climatic conditions in 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 (3) The name and address shown on the license shall be shown on all
19 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))~~ a fee of twenty-five dollars for
6 ~~((the first))~~ each product ~~((and ten dollars for each additional~~
7 ~~product))~~. Labels for each product shall accompany the application.
8 All companies planning to mix ~~((packaged))~~ customer-formula fertilizers
9 shall include the statement "customer-formula grade mixes" under the
10 column headed "product name" on the product registration application
11 form. All customer-formula fertilizers sold under one brand name shall
12 be considered one product. ~~((Upon the approval of an application by~~
13 ~~the 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 the resource conservation and recovery act, 42
36 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 RCW 15.54.800. Once a waste-
36 derived fertilizer or micronutrient fertilizer has been approved by the
37 department of ecology, its subsequent use in another product during
38 that registration cycle shall not require department of ecology review.

1 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) After July 1, 1999, the label must also state: "Information
25 received by the Washington State Department of Agriculture regarding
26 the components in this product is available on the internet at
27 <http://www.wa.gov/agr/>." and

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

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

33 (3) Each delivery of a customer-formula fertilizer shall be subject
34 to containing those ingredients specified by the purchaser, which
35 ingredients shall be shown on the statement or invoice with the amount
36 contained therein, and a record of all invoices of customer-formula
37 grade mixes shall be kept by the registrant or licensee for a period of
38 twelve months and shall be available to the department upon request:

1 PROVIDED, That each such delivery shall be accompanied by either a
2 statement, invoice, a delivery slip, or a label if bagged, containing
3 the following information: The net weight; the brand; the guaranteed
4 analysis which may be stated to the nearest tenth of a percent or to
5 the next lower whole number; the name and address of the registrant or
6 licensee, or manufacturer, or both; and the name and address of the
7 purchaser.

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

11 **Sec. 7.** RCW 15.54.380 and 1993 c 183 s 9 are each amended to read
12 as follows:

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

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

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

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

35 (2) All penalties assessed under this section on any one commercial
36 fertilizer, represented by the sample analyzed, shall be paid to the
37 department within three months after the date of notice from the
38 department to the registrant or licensee. The department shall deposit

1 the amount of the penalty into ((the fertilizer, agricultural mineral
2 and lime account)) an account with the agricultural local fund.

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

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

11 **Sec. 8.** RCW 15.54.414 and 1993 c 183 s 10 are each amended to read
12 as follows:

13 No person may distribute an adulterated commercial fertilizer. A
14 commercial fertilizer is adulterated:

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

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

22 (3) If it contains unwanted viable seed; or

23 (4) If the concentration of any nonnutritive constituent in a
24 representative sample of commercial fertilizer exceeds the maximum
25 concentration stated on the registration application or on the label.

26 **Sec. 9.** RCW 15.54.420 and 1993 c 183 s 11 are each amended to read
27 as follows:

28 It shall be unlawful for any person to:

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

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

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

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

1 (5) Distribute bulk fertilizer without holding a license to do so;
2 (6) (~~Distribute unregistered packaged fertilizer. It is the~~
3 ~~responsibility of the person who manufactures or subsequently packages~~
4 ~~that fertilizer to register it prior to distribution in this state;~~
5 ~~(7)~~) Refuse or neglect to keep and maintain records, or to make
6 reports when and as required; or
7 (~~(8)~~) (7) Make false or fraudulent applications, records,
8 invoices, or reports.

9 **Sec. 10.** RCW 15.54.436 and 1993 c 183 s 12 are each amended to
10 read as follows:

11 The department may cancel the license to distribute commercial
12 fertilizer or registration of any (~~packaged~~) commercial fertilizer
13 product or refuse to license a distributor or register any (~~packaged~~)
14 commercial fertilizer product as provided in this chapter due to:

- 15 (1) An incomplete or insufficient license or registration
16 application;
17 (2) The misbranding or adulteration of a commercial fertilizer; or
18 (3) A violation of this chapter or rules adopted under this
19 chapter.

20 If the department cancels or refuses to renew an existing license
21 or registration due to the misbranding or adulteration of a commercial
22 fertilizer or due to a violation of this chapter or a rule adopted
23 hereunder, the licensee/registrant or applicant may request a hearing
24 as provided for in chapter 34.05 RCW.

25 **Sec. 11.** RCW 15.54.470 and 1993 c 183 s 13 are each amended to
26 read as follows:

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

30 (2) Nothing in this chapter shall be considered as requiring the
31 department to report for prosecution or to cancel the registration of
32 a (~~packaged~~) commercial fertilizer product or to stop the sale of
33 fertilizers for violations of this chapter, when violations are of a
34 minor character, and/or when the department believes that the public
35 interest will be served and protected by a suitable notice of the
36 violation in writing.

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

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

14 **Sec. 12.** RCW 15.54.474 and 1987 c 45 s 10 are each amended to read
15 as follows:

16 Every person who fails to comply with this chapter, or any rule
17 adopted under it, may be subjected to a civil penalty, as determined by
18 the director, in an amount of not more than (~~one~~) seven thousand five
19 hundred dollars for every such violation. Each and every such
20 violation shall be a separate and distinct offense. Every person, who,
21 through an act of commission or omission, procures, aids, or abets in
22 the violation shall be considered to have violated this chapter and may
23 be subject to the penalty provided for in this section.

24 **Sec. 13.** RCW 15.54.480 and 1988 c 254 s 3 are each amended to read
25 as follows:

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

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

35 NEW SECTION. **Sec. 14.** The department of agriculture shall conduct
36 a comprehensive study of plant uptake of metals. The department shall

1 work cooperatively with the department of ecology and the department of
2 health to interpret the study results regarding potential impacts to
3 public and environmental health. A report of the results of the study
4 shall be submitted to appropriate committees of the legislature by
5 December 31, 2000.

6 **Sec. 15.** RCW 15.54.800 and 1997 c 427 s 3 are each amended to read
7 as follows:

8 (1) The director shall administer and enforce the provisions of
9 this chapter and any rules adopted under this chapter. All authority
10 and requirements provided for in chapter 34.05 RCW apply to this
11 chapter in the adoption of rules.

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

15 (a) Definitions of terms;

16 (b) Determining standards for labeling and registration of
17 commercial fertilizers;

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

19 (d) Recordkeeping by registrants and licensees;

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

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

24 (3)(a) Standards are established for allowable levels of
25 nonnutritive substances in commercial fertilizers. These standards are
26 Canadian figures for agricultural and agri-food Canadian maximum
27 acceptable cumulative metal additions to soil established under Trade
28 Memorandum T-4-93 dated August 1996. Washington application rates
29 shall be used to ensure that the maximum acceptable cumulative metal
30 additions to soil are not exceeded.

31 (b) If federal or other risk-based standards are adopted or
32 scientific peer-reviewed studies show that the standards adopted in
33 this section are not at the appropriate level to protect human health
34 or the environment, the department, in consultation with the
35 departments of ecology and health, may initiate a rule making to amend
36 these standards.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 15.54 RCW
2 to read as follows:

3 (1) After receipt from the department of the completed application
4 required by RCW 15.54.325, the department of ecology shall evaluate
5 whether the use of the proposed waste-derived fertilizer or the
6 micronutrient fertilizer as defined in RCW 15.54.270 is consistent with
7 the following:

8 (a) Chapter 70.95 RCW, the solid waste management act;

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

10 (c) 42 U.S.C. Sec. 6901 et seq., the resource conservation and
11 recovery act.

12 (2) The department of ecology shall apply the standards adopted in
13 RCW 15.54.800. If more stringent standards apply under chapter 173-303
14 WAC for the same constituents, the department of ecology must use the
15 more stringent standards.

16 (3) Within sixty days of receiving the completed application, the
17 department of ecology shall advise the department as to whether the
18 application complies with the requirements of subsections (1) and (2)
19 of this section. In making a determination, the department of ecology
20 shall consult with the department of health and the department of labor
21 and industries.

22 (4) A party aggrieved by a decision of the department of ecology to
23 issue a written approval under this section or to deny the issuance of
24 such an approval may appeal the decision to the pollution control
25 hearings board within thirty days of the decision. Review of such a
26 decision shall be conducted in accordance with chapter 43.21B RCW. Any
27 subsequent appeal of a decision of the hearings board shall be obtained
28 in accordance with RCW 43.21B.180.

29 **Sec. 17.** RCW 70.95.030 and 1997 c 213 s 1 are each amended to read
30 as follows:

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

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

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

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

35 (4) "Composted material" means organic solid waste that has been
36 subjected to controlled aerobic degradation at a solid waste facility
37 in compliance with the requirements of this chapter. Natural decay of

1 organic solid waste under uncontrolled conditions does not result in
2 composted material.

3 ~~(5)~~ (5) "Department" means the department of ecology.

4 ~~((+5))~~ (6) "Director" means the director of the department of
5 ecology.

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

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

12 ~~((+8))~~ (9) "Functional standards" means criteria for solid waste
13 handling expressed in terms of expected performance or solid waste
14 handling functions.

15 ~~((+9))~~ (10) "Incineration" means a process of reducing the volume
16 of solid waste operating under federal and state environmental laws and
17 regulations by use of an enclosed device using controlled flame
18 combustion.

19 ~~((+10))~~ (11) "Jurisdictional health department" means city,
20 county, city-county, or district public health department.

21 ~~((+11))~~ (12) "Landfill" means a disposal facility or part of a
22 facility at which solid waste is placed in or on land and which is not
23 a land treatment facility.

24 ~~((+12))~~ (13) "Local government" means a city, town, or county.

25 ~~((+13))~~ (14) "Modify" means to substantially change the design or
26 operational plans including, but not limited to, removal of a design
27 element previously set forth in a permit application or the addition of
28 a disposal or processing activity that is not approved in the permit.

29 ~~((+14))~~ (15) "Multiple family residence" means any structure
30 housing two or more dwelling units.

31 ~~((+15))~~ (16) "Person" means individual, firm, association,
32 copartnership, political subdivision, government agency, municipality,
33 industry, public or private corporation, or any other entity
34 whatsoever.

35 ~~((+16))~~ (17) "Recyclable materials" means those solid wastes that
36 are separated for recycling or reuse, such as papers, metals, and
37 glass, that are identified as recyclable material pursuant to a local
38 comprehensive solid waste plan. Prior to the adoption of the local
39 comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2),

1 local governments may identify recyclable materials by ordinance from
2 July 23, 1989.

3 ~~((17))~~ (18) "Recycling" means transforming or remanufacturing
4 waste materials into usable or marketable materials for use other than
5 landfill disposal or incineration.

6 ~~((18))~~ (19) "Residence" means the regular dwelling place of an
7 individual or individuals.

8 ~~((19))~~ (20) "Sewage sludge" means a semisolid substance
9 consisting of settled sewage solids combined with varying amounts of
10 water and dissolved materials, generated from a wastewater treatment
11 system, that does not meet the requirements of chapter 70.95J RCW.

12 ~~((20))~~ (21) "Soil amendment" means any substance that is intended
13 to improve the physical characteristics of the soil, except composted
14 material, commercial fertilizers, agricultural liming agents,
15 unmanipulated animal manures, unmanipulated vegetable manures, food
16 wastes, food processing wastes, and materials exempted by rule of the
17 department, such as biosolids as defined in chapter 70.95J RCW and
18 wastewater as regulated in chapter 90.48 RCW.

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

24 ~~((21))~~ (23) "Solid waste handling" means the management, storage,
25 collection, transportation, treatment, utilization, processing, and
26 final disposal of solid wastes, including the recovery and recycling of
27 materials from solid wastes, the recovery of energy resources from
28 solid wastes or the conversion of the energy in solid wastes to more
29 useful forms or combinations thereof.

30 ~~((22))~~ (24) "Source separation" means the separation of different
31 kinds of solid waste at the place where the waste originates.

32 ~~((23))~~ (25) "Vehicle" includes every device physically capable of
33 being moved upon a public or private highway, road, street, or
34 watercourse and in, upon, or by which any person or property is or may
35 be transported or drawn upon a public or private highway, road, street,
36 or watercourse, except devices moved by human or animal power or used
37 exclusively upon stationary rails or tracks.

38 ~~((24))~~ (26) "Waste-derived soil amendment" means any soil
39 amendment as defined in this chapter that is derived from solid waste

1 as defined in RCW 70.95.030, but does not include biosolids or
2 biosolids products regulated under chapter 70.95J RCW or wastewaters
3 regulated under chapter 90.48 RCW.

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

6 NEW SECTION. Sec. 18. A new section is added to chapter 70.95 RCW
7 to read as follows:

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

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

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

17 (2) After receipt of an application, the department shall review it
18 to determine whether the application is complete, and forward a copy of
19 the complete application to all interested jurisdictional health
20 departments for review and comment. Within forty-five days, the
21 jurisdictional health departments shall forward their comments and any
22 other information they deem relevant to the department, which shall
23 then give final approval or disapproval of the application. Every
24 complete application shall be approved or disapproved by the department
25 within ninety days after receipt.

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

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

35 **Sec. 19.** RCW 70.95.240 and 1997 c 427 s 4 are each amended to read
36 as follows:

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

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

12 (~~Apply to a person using a material or materials on the land
13 as commercial fertilizer if (i) the department of ecology has issued
14 written approval for the use of the material or materials as commercial
15 fertilizer as provided in RCW 70.95.830, (ii) the registration of the
16 material or materials as a packaged commercial fertilizer has not been
17 canceled under RCW 15.54.335, and (iii) the distribution of the
18 material or materials as a commercial fertilizer has not been
19 prohibited by the department of agriculture under RCW 15.54.335~~) Apply
20 to a person using a waste-derived soil amendment that has been approved
21 by the department under section 18 of this act; or

22 (c) Apply to the application of commercial fertilizer that has been
23 registered with the department of agriculture as provided in RCW
24 15.54.325, and that is applied in accordance with the standards
25 established in RCW 15.54.800(3).

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

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

37 NEW SECTION. Sec. 20. The department of ecology, in conjunction
38 with the departments of agriculture and health, shall undertake a study

1 of whether dioxins occur in fertilizers, soil amendments, and soils and
2 if so, at what levels. The department of ecology shall seek additional
3 financial and technical assistance from appropriate federal agencies,
4 the fertilizer industry, and other appropriate sources in conducting
5 this study. The department of ecology shall report its findings to the
6 legislature in November 1998.

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

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

12 (2) Except for confidential information under RCW 15.54.362
13 regarding fertilizer tonnages distributed in the state, information in
14 the fertilizer data base shall be made available to the public upon
15 request.

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

22 (4) After July 1, 1999, the department shall post on the internet
23 the information contained in applications for fertilizer registration.

24 **Sec. 22.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
25 read as follows:

26 (1) The hearings board shall only have jurisdiction to hear and
27 decide appeals from the following decisions of the department, the
28 director, (~~the administrator of the office of marine safety,~~) and the
29 air pollution control boards or authorities as established pursuant to
30 chapter 70.94 RCW, or local health departments:

31 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
32 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
33 90.56.330.

34 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
35 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
36 90.14.130, and 90.48.120.

1 (c) The issuance, modification, or termination of any permit,
2 certificate, or license by the department or any air authority in the
3 exercise of its jurisdiction, including the issuance or termination of
4 a waste disposal permit, the denial of an application for a waste
5 disposal permit, or the modification of the conditions or the terms of
6 a waste disposal permit.

7 (d) Decisions of local health departments regarding the grant or
8 denial of solid waste permits pursuant to chapter 70.95 RCW.

9 (e) Decisions of local health departments regarding the issuance
10 and enforcement of permits to use or dispose of biosolids under RCW
11 70.95J.080.

12 (f) Decisions of the department regarding waste-derived fertilizer
13 or micronutrient fertilizer under section 16 of this act, and decisions
14 of the department regarding waste-derived soil amendments under section
15 18 of this act.

16 (g) Any other decision by the department(~~(, the administrator of~~
17 ~~the office of marine safety,)) or an air authority which pursuant to
18 law must be decided as an adjudicative proceeding under chapter 34.05
19 RCW.~~

20 (2) The following hearings shall not be conducted by the hearings
21 board:

22 (a) Hearings required by law to be conducted by the shorelines
23 hearings board pursuant to chapter 90.58 RCW.

24 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
25 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

26 (c) Proceedings by the department relating to general adjudications
27 of water rights pursuant to chapter 90.03 or 90.44 RCW.

28 (d) Hearings conducted by the department to adopt, modify, or
29 repeal rules.

30 (3) Review of rules and regulations adopted by the hearings board
31 shall be subject to review in accordance with the provisions of the
32 Administrative Procedure Act, chapter 34.05 RCW.

33 NEW SECTION. Sec. 23. 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. 24.** This act may be known and cited as the
2 fertilizer regulation act.

3 NEW SECTION. **Sec. 25.** If specific funding for the purposes of
4 this act, referencing this act by bill or chapter number, is not
5 provided by June 30, 1998, in the omnibus appropriations act, this act
6 is null and void.

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