

HOUSE BILL REPORT

ESHB 2095

As Passed House:

March 12, 1999

Title: An act relating to registration fees, stop sale and use, seizure, and disposal of commercial fertilizer.

Brief Description: Regulating commercial fertilizer.

Sponsors: By House Committee on Agriculture & Ecology (Originally sponsored by Representatives G. Chandler, Linville, Koster, Grant, B. Chandler, Anderson and Sump).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/25/99, 3/2/99 [DPS].

Floor Activity:

Passed House: 3/12/99, 96-0.

Brief Summary of Substitute Bill

- Changes annual fertilizer registrations to staggered biennial registrations and adjusts the registration fee accordingly.
- Alters requirements regarding "stop sale, use or removal" orders and regarding seizures of fertilizers.
- Makes the distributor, owner, or custodian of a commercial fertilizer responsible for costs associated with "stop sale," "stop use," or "withdrawal from distribution" orders and makes such persons other than consumers or transporters responsible for the costs of disposal following condemnation under a seizure order.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

Staff: Kenneth Hirst (786-7105).

Background:

Registration. No person may distribute a commercial fertilizer in this state unless the fertilizer is registered with the Washington State Department of Agriculture (WSDA). The registration fee is \$25. Registrations expire on June 30 annually. Bulk fertilizers do not have to be registered if all of the fertilizer products in them are registered. However, those who distribute bulk fertilizer must be licensed by the WSDA.

Stop Sale Orders and Seizures. If the WSDA has reasonable cause to believe that fertilizer is being offered or exposed for sale in violation of any of the commercial fertilizer laws, it may issue a stop sale, use, or removal order and require that the fertilizer be held at a designated place until released by the WSDA for compliance with those laws. Any lot of commercial fertilizer not in compliance is also subject to seizure. For this purpose, the WSDA must file a complaint with a court of competent jurisdiction in the area in which the fertilizer is located. With certain exceptions, if the court finds that the fertilizer is in violation of the commercial fertilizer laws and orders the condemnation of the fertilizer, it shall be disposed of in a manner consistent with the quality of the commercial fertilizer and the laws of the state.

Summary of Bill:

Commercial fertilizers must now be registered biennially (rather than annually). Registrations are staggered alphabetically so that a portion of the registrations are made in even-numbered years and a portion in odd-numbered years. The fee for a two-year registration is \$50. Labels for each product no longer need to be submitted with each registration application.

In lieu of a "removal" order, the WSDA may issue a "withdrawal from distribution" order. In addition to an owner or custodian of a fertilizer, a distributor is expressly added as one to whom a regulatory order may be issued.

It is declared that fertilizers not registered or that fail to meet metals standards maybe harmful to soils and may contain substances harmful to the public. A "stop sale," "stop use," or "withdrawal from distribution" order may expressly be issued if the commercial fertilizer is not registered in this state or according to the WSDA, fails to meet this

state's standards for total metals. A fertilizer is to be released from such an order when the distributor, owner, or custodian has complied with the commercial fertilizer laws and rules. If compliance is not or cannot be obtained, the WSDA may institute seizure proceedings or may agree in writing to an alternative disposition of the commercial fertilizer. If the seizure is for these purposes, the WSDA may file its complaint with the Thurston County Superior Court or other court of competent jurisdiction.

All costs associated with a "stop sale," "stop use," or "withdrawal from distribution" order incurred by the distributor, owner, or custodian of a commercial fertilizer are the responsibility of the distributor, owner, or custodian. All costs associated with disposal following condemnation under a seizure order are the responsibility of the distributor, owner, or custodian of the commercial fertilizer unless such a person is the consumer or is only a transporter of the fertilizer. The disposal costs are not the responsibility of the consumer or such a transporter of the commercial fertilizer.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect July 1, 1999.

Testimony For: (Original Bill) The bill makes sure the WSDA is not responsible for the disposal of fertilizer that has been seized and ordered disposed of.

(Concerns) (1) Without notice, the WSDA issued stop orders for retailers because of faulty labeling of fertilizers regarding Washington standards for metals. Please remove the labeling requirement and replace it with in-store and web site information. In this case any costs of disposal should be borne by the manufacturer or entity that brought the fertilizer into the state. (2) Do not regulate what is on the outside of a package; regulate what is in the fertilizer. One manufacturer has spent over one half million dollars on placing special Washington labels on its products when it distributes them directly. Even this effort does not help other distributors of its products. (3) The Washington label is not allowed in some other jurisdictions. (4) Stop sale orders and seizures should not be made for misbranding. (5) The end users should be insulated from the cost of disposing of fertilizer seized under the bill.

Testimony Against: None.

Testified: (In favor, original bill with amendments) Mary Beth Lang and Ted Maxwell, Department of Agriculture.

(Concerns, original bill) Jan Gee, Washington Retail Association; Frank Warnke, Scotts Fertilizer Company; and Dan Coyne, Far West Chemical Association.