
SUBSTITUTE SENATE BILL 5194

State of Washington

62nd Legislature

2011 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators White, Rockefeller, Ranker, Litzow, Nelson, Brown, Fraser, Pridemore, Hobbs, Keiser, Kohl-Welles, Kline, Chase, and Harper)

READ FIRST TIME 02/16/11.

1 AN ACT Relating to protecting water quality through restrictions on
2 fertilizer containing phosphorus; amending RCW 15.54.270, 15.54.470,
3 and 15.54.474; adding new sections to chapter 15.54 RCW; creating a new
4 section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) Phosphorus loading of surface waters can stimulate the growth
8 of weeds and algae and that this growth can have adverse environmental,
9 health, and aesthetic effects;

10 (b) Turf fertilizer contributes to phosphorus loading. Limits on
11 turf fertilizer labeled as containing phosphorus can significantly
12 reduce the discharge of phosphorus into the state's ground and surface
13 waters;

14 (c) Turf fertilizer containing no or very low amounts of phosphorus
15 is readily available and maintaining established turf in a healthy and
16 green condition is not dependent upon the addition of turf fertilizer
17 labeled as containing phosphorus; and

18 (d) While significant reductions of phosphorus from laundry

1 detergent and dishwashing detergent have been achieved, similar
2 progress in reducing phosphorus contributions from turf fertilizer has
3 not been accomplished.

4 (2) It is the intent of the legislature to significantly limit the
5 use of turf fertilizers labeled as containing phosphorus.

6 **Sec. 2.** RCW 15.54.270 and 1998 c 36 s 2 are each amended to read
7 as follows:

8 (~~Terms used in~~) The definitions in this section apply throughout
9 this chapter (~~have the meaning given to them in this chapter~~) unless
10 the context clearly (~~indicates~~) requires otherwise.

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

14 (2) "Bulk fertilizer" means commercial fertilizer distributed in a
15 nonpackaged form such as, but not limited to, tote bags, tote tanks,
16 bins, tanks, trailers, spreader trucks, and railcars.

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

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

27 (5) "Composting" means the controlled aerobic degradation of
28 organic waste materials. Natural decay of organic waste under
29 uncontrolled conditions is not composting.

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

33 (7) "Department" means the department of agriculture of the state
34 of Washington or its duly authorized representative.

35 (8) "Director" means the director of the department of agriculture.

36 (9) "Distribute" means to import, consign, manufacture, produce,

1 compound, mix, or blend commercial fertilizer, or to offer for sale,
2 sell, barter, exchange, or otherwise supply commercial fertilizer in
3 this state.

4 (10) "Distributor" means a person who distributes.

5 (11) "Fertilizer material" means a commercial fertilizer that
6 either:

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

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

11 (c) Is derived from a plant or animal residue or by-product or
12 natural material deposit that has been processed in such a way that its
13 content of plant nutrients has not been materially changed except by
14 purification and concentration.

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

23 (13) "Guaranteed analysis."

24 (a) Until the director prescribes an alternative form of
25 "guaranteed analysis" by rule the term "guaranteed analysis" shall mean
26 the minimum percentage of plant nutrients claimed in the following
27 order and form:

28	Total nitrogen (N)	percent
29	Available phosphoric acid (P ₂ O ₅)	percent
30	Soluble potash (K ₂ O)	percent

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

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

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

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

8 (d) The guaranteed analysis for limes shall include the percentage
9 of calcium or magnesium expressed as their carbonate; the calcium
10 carbonate equivalent as determined by methods prescribed by the
11 association of official analytical chemists; and the minimum percentage
12 of material that will pass respectively a one hundred mesh, sixty mesh,
13 and ten mesh sieve. The mesh size declaration may also include the
14 percentage of material that will pass additional mesh sizes.

15 (e) In commercial fertilizer, the principal constituent of which is
16 calcium sulfate (gypsum), the percentage of calcium sulfate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$)
17 shall be given along with the percentage of total sulfur.

18 (14) "Imported fertilizer" means any fertilizer distributed into
19 Washington from any other state, province, or country.

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

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

27 (17) "Licensee" means the person who receives a license to
28 distribute a commercial fertilizer under the provisions of this
29 chapter.

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

33 (19) "Manipulation" means processed or treated in any manner,
34 including drying to a moisture content less than thirty percent.

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

1 (21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron;
2 manganese; molybdenum; sodium; and zinc.

3 (22) "Micronutrient fertilizer" means a produced or imported
4 commercial fertilizer that contains commercially valuable
5 concentrations of micronutrients but does not contain commercially
6 valuable concentrations of nitrogen, phosphoric acid, available
7 phosphorus, potash, calcium, magnesium, or sulfur.

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

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

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

18 (26) "Person" means an individual, firm, brokerage, partnership,
19 corporation, company, society, or association.

20 (27) "Percent" or "percentage" means the percentage by weight.

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

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

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

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

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

35 (33) "Washington application rate" is calculated by using an
36 averaging period of up to four consecutive years that incorporates
37 agronomic rates that are representative of soil, crop rotation, and
38 climatic conditions in Washington state.

1 (34) "Waste-derived fertilizer" means a commercial fertilizer that
2 is derived in whole or in part from solid waste as defined in chapter
3 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include
4 fertilizers derived from biosolids or biosolids products regulated
5 under chapter 70.95J RCW or wastewaters regulated under chapter 90.48
6 RCW.

7 (35)(a) "Turf" means land, including residential property,
8 commercial property, and publicly owned land, which is planted in
9 closely mowed, managed grass.

10 (b) "Turf" does not include pasture land, land used to grow grass
11 for sod, or any other land used for agricultural production or
12 residential vegetable or flower gardening.

13 (36)(a) "Turf fertilizer" means a commercial fertilizer that is
14 labeled for use on turf.

15 (b) "Turf fertilizer" does not include commercial fertilizers
16 derived solely from organic materials, biosolids, or biosolid products.

17 NEW SECTION. Sec. 3. A new section is added to chapter 15.54 RCW
18 to read as follows:

19 (1) Except as otherwise provided in section 4 of this act, a person
20 may not apply turf fertilizer that is labeled as containing phosphorus
21 to turf.

22 (2) A person may not apply turf fertilizer labeled as containing
23 phosphorus to turf when the ground is frozen.

24 (3) A person may not intentionally apply turf fertilizer labeled as
25 containing phosphorus to an impervious surface.

26 NEW SECTION. Sec. 4. A new section is added to chapter 15.54 RCW
27 to read as follows:

28 Section 3(1) of this act does not apply in the following instances:

29 (1) Application for the purpose of establishing grass or repairing
30 damaged grass, using either seeds or sod, during the growing season in
31 which the grass is established;

32 (2) Application to an area if the soil in the area is deficient in
33 plant available phosphorus, as shown by a soil test performed no more
34 than thirty-six months before the application; or

35 (3) Application to pasture, interior houseplants, flower and

1 vegetable gardens located on either public or private property, land
2 used to grow grass for sod, or any land used for agricultural or
3 silvicultural production.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 15.54 RCW
5 to read as follows:

6 (1) Except as provided in subsection (2) of this section, no person
7 may sell turf fertilizer that is labeled as containing phosphorus.

8 (2) The sale of turf fertilizer that is labeled as containing
9 phosphorus is allowed for the following purposes:

10 (a) Application for the purpose of establishing grass or repairing
11 damaged grass, using either seeds or sod, during the growing season in
12 which the grass is established;

13 (b) Application to an area if the soil in the area is deficient in
14 plant available phosphorus, as shown by a soil test performed no more
15 than thirty-six months before the application; or

16 (c) Application to pasture, interior houseplants, flower and
17 vegetable gardens located on either public or private property, land
18 used to grow grass for sod, or any land used for agricultural or
19 silvicultural production.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 15.54 RCW
21 to read as follows:

22 A person who sells turf fertilizer at retail may only display turf
23 fertilizer that is labeled as containing phosphorus if it is also
24 clearly labeled for a use permitted by section 5 of this act.

25 **Sec. 7.** RCW 15.54.470 and 1998 c 36 s 11 are each amended to read
26 as follows:

27 (1) Except for violations of sections 3, 5, and 6 of this act, any
28 person who violates any provision of this chapter shall be guilty of a
29 misdemeanor, and the fines collected shall be disposed of as provided
30 under RCW 15.54.480.

31 (2) Nothing in this chapter shall be considered as requiring the
32 department to report for prosecution or to cancel the registration of
33 a commercial fertilizer product or to stop the sale of fertilizers for
34 violations of this chapter, when violations are of a minor character,

1 and/or when the department believes that the public interest will be
2 served and protected by a suitable notice of the violation in writing.

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

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

16 **Sec. 8.** RCW 15.54.474 and 1998 c 36 s 12 are each amended to read
17 as follows:

18 Except for violations of sections 3, 5, and 6 of this act, every
19 person who fails to comply with this chapter, or any rule adopted under
20 it, may be subjected to a civil penalty, as determined by the director,
21 in an amount of not more than seven thousand five hundred dollars for
22 every such violation. Each and every such violation shall be a
23 separate and distinct offense. Every person, who, through an act of
24 commission or omission, procures, aids, or abets in the violation shall
25 be considered to have violated this chapter and may be subject to the
26 penalty provided for in this section.

27 NEW SECTION. **Sec. 9.** This act takes effect January 1, 2013.

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