
A BILL FOR AN ACT

RELATING TO FERTILIZER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that there is no state
2 law regulating the sale, distribution, and use of fertilizers,
3 soil amendments, and liming materials within the State. Without
4 regulation, the common practice of adding hazardous waste to
5 fertilizers is potentially dangerous to public health and to the
6 environment. In 1997, a *Seattle Times* investigation brought the
7 issue of how hazardous waste becomes fertilizer to the public's
8 attention.

9 The *Times* investigation noted that "any material that has
10 fertilizing qualities can be labeled and used as a fertilizer,
11 even if it contains dangerous chemicals and heavy metals."
12 Additionally, fertilizer manufacturers must report only
13 beneficial ingredients; they are not required to report or label
14 the potentially harmful ingredients contained in their products.
15 Toxins found in hazardous waste derived fertilizers include
16 lead, arsenic, beryllium, cadmium, mercury, dioxin, PCB's,
17 uranium, and other heavy metals. As a result of high landfill
18 costs and stringent environmental laws enacted in the 1970s,



1 certain industries saved millions of dollars in disposal costs
2 by giving away toxic waste for free to fertilizer manufacturers,
3 or even paying them to take it.

4 Many of the heavy metals found in waste derived fertilizers
5 can be highly toxic to plants, animals, and humans; several are
6 known to cause cancer and other serious illnesses, such as
7 neurological dysfunction and birth defects. The *Times* reported
8 numerous examples of failed crops, sickened farm animals, and
9 human sickness on farms where waste derived fertilizers had been
10 used.

11 Under a loophole in federal regulations, certain hazardous
12 wastes may be disposed of by placement directly on the land "as
13 is" (land treatment) or incorporated into fertilizer as a waste
14 derived product. Under the land treatment option, the hazardous
15 waste is subject to regulation, requiring a demonstration that
16 the contaminants of concern are not taken up into crops at any
17 greater rate than on untreated soils, do not migrate to
18 groundwater, and are not discharged into the air. Once a
19 hazardous waste is incorporated into a product such as
20 fertilizer, however, it is no longer subject to the tracking
21 normally applied to hazardous wastes. This unregulated final
22 disposition of waste derived fertilizers is inconsistent with



1 the statutory "cradle-to-grave" mandate of the Resource
2 Conservation and Recovery Act of 1976, which requires an
3 affirmative finding of safety before a method of disposal is
4 allowed.

5 In Hawaii, certain hazardous waste materials may legally be
6 offered for sale, which has resulted in our agricultural lands,
7 landscapes, public parks, and golf courses serving as dumping
8 grounds for hazardous and other industrial wastes. A recently
9 released report on contaminants in streambed sediments on Oahu
10 shows a significant elevation in arsenic, lead, and cadmium, as
11 well as increases in antimony, zinc, and barium over background
12 levels found in Hawaii's forested areas due to agricultural
13 practices, noting that the presence of these elements could be
14 attributed to the use of fertilizers. Similarly, a significant
15 enhancement of arsenic in Maui golf course soils that received
16 super phosphate fertilizers was reported. The use of hazardous
17 wastes in fertilizer, however, has not been proven safe.

18 The effect of using such contaminants in fertilizer on
19 children and developing fetuses is particularly uncertain.
20 Furthermore, hazardous wastes in fertilizers have not been
21 proven safe for sensitive ecosystems, such as the ecosystems in
22 the waters of the Hawaiian Islands. The hazardous wastes used

1 in fertilizer should be subject to the same rigorous
2 requirements as other hazardous wastes under chapter 342J,
3 Hawaii Revised Statutes.

4 The purpose of this Act is to establish standards on toxic
5 metals and other contaminants in fertilizers, establish a
6 process to register fertilizers with the State, and require full
7 regulation of fertilizer.

8 SECTION 2. The Hawaii Revised Statutes is amended by
9 adding a new chapter to be appropriately designated and to read
10 as follows:

11 "CHAPTER

12 HAZARDOUS SUBSTANCES IN FERTILIZER

13 § -1 The legislature finds that:

- 14 (1) Residents and the environment are being exposed each
- 15 year to a large number of hazardous substances in use
- 16 in fertilizers, soil amendments, and liming materials;
- 17 (2) This exposure is without the public's knowledge or
- 18 consent;
- 19 (3) There is great scientific uncertainty about the
- 20 environmental transport and plant uptake rates for
- 21 these hazardous substances that presents an

1 unreasonable risk to the public's health and welfare
2 and the environment;

3 (4) Our current regulations fail to systematically
4 integrate economic and environmental goals, thus
5 putting both at risk; and

6 (5) Fertilizers, soil amendments, or liming materials that
7 fail to meet the state standards for total controlled
8 substances pose an emergency situation because they
9 may contain hazardous substances at levels that are
10 harmful to beneficial plant life, animals, humans,
11 aquatic life, soil, and water.

12 The purpose of this chapter is to provide effective control
13 of the sale, distribution, and use of fertilizers, soil
14 amendments, and liming materials in the State.

15 § -2 **Definitions.** As used in this chapter:

16 "Controlled substance" means any substance classified as a
17 hazardous substance prior to its use in fertilizer. Controlled
18 substance applies to any substance originating from a virgin,
19 waste, or non-waste source, regardless as to whether the process
20 to incorporate the substance into fertilizer is defined as
21 "use", "recycling", "reuse", or "disposal" by other relevant
22 regulations.



1 "Department" means the department of health.

2 "Fertilizer" means a substance containing one or more
3 recognized plant nutrients that is used for its plant nutrient
4 content or that is designated for use or claimed to have value
5 in promoting plant growth, and includes manipulated animal and
6 vegetable manures. "Fertilizer" does not include unmanipulated
7 animal and vegetable manures, organic waste-derived material,
8 lime, gypsum, and other products exempted pursuant to rules
9 adopted in accordance with chapter 91. "Fertilizer" includes
10 commercial, bulk, custom, and specialty fertilizers.

11 "Hazardous substance" means any liquid, solid, gas, or
12 sludge, including any material, substance, product, commodity,
13 or waste, regardless of quantity, that exhibits any of the
14 characteristics or criteria of hazardous waste as described in
15 rules adopted pursuant to chapter 91, regardless of whether the
16 substance is a virgin or waste material as defined under state
17 or federal law.

18 "Label" means the display of all written, printed, or
19 graphic matter, upon the immediate container, or a statement
20 accompanying a fertilizer, soil amendment, or liming material.

21 "Labeling" includes all written, printed, or graphic
22 matter, upon or accompanying a fertilizer, soil amendment, or



1 liming material, and any advertisement, brochure, poster, or
2 television or radio announcement used in promoting the sale of
3 such products.

4 "Liming material" means all suitable materials containing
5 calcium or magnesium in chemical form, physical condition, and
6 quantity capable of neutralizing soil acidity, that includes,
7 but is not limited to, limestone, burnt lime, marl, and
8 industrial byproducts meeting the standards established under
9 this chapter.

10 "Organic waste" means grass clippings, leaves, weeds, bark,
11 plantings, prunings, and other vegetative wastes, uncontaminated
12 wood waste from logging and milling operations, food wastes,
13 food processing wastes, and materials derived from these wastes
14 through composting.

15 "Soil amendment" means any substance that is intended to
16 improve the physical characteristics of the soil, except
17 composted material, commercial fertilizers, agricultural liming
18 materials, unmanipulated animal manures, unmanipulated vegetable
19 manures, food wastes, food processing wastes, and materials
20 exempted by rule adopted pursuant to chapter 91.

21 "Waste-derived product":



1 (1) Means any fertilizer, agricultural mineral,
2 agricultural amendment, or liming material derived in
3 whole or in part from hazardous waste as defined in
4 section 342J-2 or in rules adopted pursuant to chapter
5 91, or solid waste as defined in section 342G-1 or in
6 rules adopted pursuant to chapter 91;

7 (2) Does not include:

8 (A) Biosolids, biosolids-derived products, domestic
9 septage, and domestic wastewater treatment
10 facility solids; or

11 (B) Reclaimed water or treated effluent.

12 Waste-derived products are subject to full regulation.

13 § -3 **Standards.** (a) The department shall establish
14 standards for hazardous substances that are not plant nutrients,
15 at the lowest level detectable for fertilizer, soil amendment,
16 or liming material.

17 At a minimum, the department shall establish the non-
18 detectable limit for the following nonnutritive controlled
19 substances: aluminum, antimony, arsenic (total As, including As
20 III and As V), barium, beryllium, cadmium, chromium (total Cr,
21 including Cr III and Cr VI), lead, mercury (total Hg), nickel,
22 silver, thallium, vanadium, and uranium.



1 For plant nutrients, the limit shall be the nondetectable
2 limit except in products disclosing the element's presence, in
3 which case the limit shall be set at an agronomically
4 appropriate level for: boron, chlorine, cobalt, copper, iron,
5 manganese, molybdenum, selenium, and zinc.

6 (b) The department shall review these standards at least
7 once every five years.

8 § -4 **Registration application.** (a) No person may sell,
9 offer for sale, or distribute a fertilizer, soil amendment, or
10 liming material in this State until it has been registered with
11 the department by the producer, importer, or packager of that
12 product.

13 (b) Not less than ninety days prior to applying for
14 registration, the registrant shall submit a two-pound sample of
15 the fertilizer, soil amendment, or liming material to the
16 department for analysis.

17 The sample shall be drawn, using the method previously
18 defined for official samples, and marked, certified, and
19 submitted, as prescribed by the department. The applicant shall
20 pay an analysis fee at the time the sample is submitted. The
21 department may assess a reasonable fee for the analysis and
22 shall complete the analysis within ninety days.



1 (c) An application for registration shall be made on a
2 form furnished by the department and shall include the
3 following:

- 4 (1) The product's name, brand, and grade;
- 5 (2) The guaranteed analysis;
- 6 (3) The registrant's name, address, and phone number;
- 7 (4) A copy of the label and labeling for each product
8 being registered;
- 9 (5) Identification of any product that is a waste-derived
10 fertilizer, soil amendment, or liming agent or derived
11 from a controlled substance, including the source of
12 each ingredient material and also including nutrients,
13 inactive ingredients, or fillers; and
- 14 (7) The department's report regarding the concentration of
15 each hazardous substance in each product being
16 registered.

17 (d) The fertilizer, soil amendment, or liming material
18 registrant is responsible for proving that its product complies
19 with this chapter as a condition of registration.

20 (e) After the department receives the completed
21 application, the department shall evaluate whether the use of
22 the proposed fertilizer is consistent with the following:



- 1 (1) Integrated Solid Waste Management, chapter 342G;
- 2 (2) Hazardous Waste Management, chapter 342J;
- 3 (3) This chapter; and
- 4 (4) 42 U.S.C. section 6901 et seq., the Resource
- 5 Conservation and Recovery Act.

6 The department shall apply the most stringent standard for
7 any controlled substance.

8 The evaluation under this subsection shall be completed
9 within sixty days of receiving the completed application,
10 including all information required under this chapter.

11 (f) All fertilizers, soil amendments, or liming materials
12 currently registered shall not be automatically renewed and
13 shall be subject to the standards established under this
14 chapter. The department, however, may grant extensions not to
15 exceed six months and balance the needs of the public's health
16 and safety with respect to the consumer's timely access to
17 fertilizer products.

18 (g) The department shall establish reasonable registration
19 fees to ensure the program is self-supporting and capable of
20 supporting the purchase, installation, and operation of the
21 requisite testing equipment and the hiring of necessary
22 personnel for laboratory and enforcement purposes.

1 § **-5 Labels.** (a) Notwithstanding any other law to the
2 contrary, the department shall examine the product registration
3 application form, labels, and labeling for conformance with this
4 chapter. In determining whether approval of a labeling
5 statement or ingredient guarantee is appropriate, the department
6 may require a written statement describing the methodology of
7 laboratory analysis utilized or any reference material relied
8 upon to support a label statement or ingredient guarantee.

9 The required analysis of hazardous substances conducted by
10 the department shall be considered conclusive evidence of
11 whether any controlled substances are present.

12 (b) If the application and appropriate labels are in
13 proper form, contain the required information, and the products
14 comply with standards established under this chapter, the
15 products shall be registered by the department and a certificate
16 of registration shall be issued to the applicant.

17 (c) The department may adopt labeling rules pursuant to
18 chapter 91.

19 § **-6 Adulteration and mislabeling.** (a) No person may
20 distribute an adulterated fertilizer, soil amendment, or liming
21 material within the State.



1 A fertilizer, soil amendment, or liming material is
2 adulterated if:

3 (1) It contains any substance in a sufficient amount that
4 may render it injurious to plant life, animals,
5 humans, aquatic life, soil, or water when applied in
6 accordance with directions for use on the label;

7 (2) The source or relative quantity of any ingredient
8 differs from the source or quantity disclosed in the
9 registration application or any additional material
10 requested by the department in support of the
11 registration process; or

12 (3) The quantity of any controlled substance exceeds the
13 standard set under this chapter.

14 (b) No person may distribute a mislabeled product within
15 the State. A product is mislabeled if:

16 (1) A waste-derived fertilizer, soil amendment, or liming
17 material is not designated as such on the label; or

18 (2) The label or labeling differs in any way from the
19 label or labeling approved by the department during
20 the registration process.

21 **§ -7 Illegal acts, stop sale, and license cancellation.**

22 (a) It shall be unlawful for any person to:

- 1 (1) Distribute an adulterated or misbranded fertilizer,
- 2 soil amendment, or liming material; or
- 3 (2) Fail, refuse, or neglect to place upon, or attach to,
- 4 each package of fertilizer, soil amendment, or liming
- 5 material distributed within the State, a label or
- 6 labeling identical to that approved by the department
- 7 during the registration process.

8 (b) Illegal fertilizers, soil amendments, or liming
 9 materials are subject to immediate stop sale, use, or removal
 10 from distribution in this State, and may be seized, condemned,
 11 and disposed.

12 (c) The department may cancel, revoke, or refuse to
 13 register any fertilizer, soil amendment, or liming material, and
 14 may refuse to license a distributor under this chapter if the
 15 department has reasonable cause to believe that the registrant
 16 has:

- 17 (1) Sold, distributed, or used a misbranded or adulterated
- 18 fertilizer, soil amendment, or liming material; or
- 19 (2) Been convicted, in this or any other state, of a civil
- 20 or criminal charge for which a permit may be revoked,
- 21 suspended, annulled, amended, or refused under this
- 22 chapter.

1 § -8 **Seizure for noncompliance.** (a) Any fertilizer,
2 soil amendment, or liming material not in compliance with this
3 chapter shall be subject to seizure on complaint by the
4 department to a court of competent jurisdiction in which the
5 product is located.

6 (b) In the event the court finds, upon application by the
7 department, that a fertilizer, soil amendment, or liming
8 material violates this chapter or the rules adopted therefor,
9 and orders its condemnation, the fertilizer, soil amendment, or
10 liming material shall be disposed of in a manner consistent with
11 the quality of the product and the laws of the State; provided
12 that in no instance shall the disposition of the condemned
13 material be ordered by the court without first providing the
14 claimant an opportunity to apply to the court for permission to
15 process or relabel the fertilizer, soil amendment, or liming
16 material to comply with this chapter and applicable rules.

17 (c) All costs associated with the disposal of a fertilizer
18 shall be the responsibility of the distributor, owner, or
19 custodian of the fertilizer, soil amendment, or liming material
20 unless the distributor, owner, or custodian is a consumer or a
21 transporter of the product. A consumer or transporter shall not
22 be responsible for disposal costs. All costs shall be assessed



1 against the registrant, licensee, or the person the court finds
2 caused the fertilizer's, soil amendment's, or liming material's
3 unlawful condition.

4 (d) No state court shall award damages due to
5 administrative action taken under this chapter, including
6 refusal to register, registration revocation or cancellation,
7 stop sales, or seizures, where the court finds that there was
8 probable cause for the administrative action.

9 (e) Every person who fails to comply with this chapter, or
10 any rule adopted therefor, may be subject to a civil penalty, as
11 determined by the department, in an amount of not more than
12 \$7,500 for every violation. Each violation shall be a separate
13 and distinct offense.

14 § -9 **Citizen initiative.** Any person may commence a
15 civil action:

16 (1) Against any person for failure to comply with this
17 chapter; or

18 (2) Against the department where there is an alleged
19 failure of the department to perform any act or duty
20 under this chapter that is not discretionary; provided
21 that the department shall be given a sixty day notice



1 of such action to respond and to attempt to resolve
2 the dispute.

3 § -10 **Public disclosure.** (a) The department shall
4 publish at least annually and in a form it deems proper:

5 (1) Information concerning the distribution of
6 fertilizers, soil amendments, and liming materials;
7 and

8 (2) Results of analyses based on official samples as
9 compared with the analyses guaranteed, noting
10 particularly anywhere the level of a controlled
11 substance exceeds statutory levels.

12 (b) The published information shall be made available to
13 the public.

14 (c) The department shall biennially prepare a report to
15 the legislature presenting information on levels of nonnutritive
16 substances in fertilizers, results from department testing of
17 products that were sampled, and interim or final results from
18 any field studies conducted under the requirements of this
19 chapter.

20 § -11 **Enforcement.** (a) The department shall enforce
21 all provisions of this chapter.

1 (b) The department shall allocate necessary personnel to
2 sampling and analysis to effectuate this chapter."

3 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Fertilizer; Health; Hazardous Substances

Description:

Regulates the sale, distribution, and use of fertilizers, soil amendments, and liming materials in the State. (HD1)

