

JAN 25 2006

A BILL FOR AN ACT

RELATING TO HAZARDOUS SUBSTANCES.

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

1 SECTION 1. Humans and the environment are being exposed to
2 a large number of hazardous substances used in fertilizers, soil
3 amendment, and liming materials each year, and many people are
4 not even aware of how extensive or dangerous the exposure is.
5 There is great scientific uncertainty about the environmental
6 transport and plant uptake rates for hazardous substances in
7 these products and some present an unreasonable risk of injury
8 to public health and welfare, as well as the environment.

9 Current regulations fail to systematically integrate
10 economic and environmental goals, putting both at risk. Any
11 fertilizers, soil amendments, and liming materials that do not
12 meet state standards for total controlled substances pose an
13 even greater threat to humans, plant life, animals, aquatic
14 life, soil and water, and the other facets of the environment.

15 Therefore, the legislature finds that hazardous substances
16 added to fertilizers, soil amendments, and liming materials need
17 to be regulated to protect the health, safety, and welfare of
18 the citizens of the State and protect and conserve the State's



1 natural resources and environment. Accordingly, the purpose of
2 this Act is to:

- 3 (1) Ensure that all fertilizers, soil amendments, and
4 liming materials meet the standards for controlled
5 substances;
- 6 (2) Require all fertilizers, soil amendments, and liming
7 materials sold or distributed in the State to be
8 registered with the department of health;
- 9 (3) Allow purchasers and users of the products to know
10 about the product's contents;
- 11 (4) Provide better information to the public by publishing
12 analytical results of each newly registered
13 fertilizer, soil amendment, and liming material; and
- 14 (5) Clarify the director's and the department's authority
15 to regulate fertilizers, soil amendments, and liming
16 materials containing controlled substances, which
17 include commercial, custom-blend, bulk, and specialty
18 products, and source materials.

19 SECTION 2. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:



1 "CHAPTER

2 FERTILIZER, SOIL AMENDMENT, AND LIMING MATERIAL QUALITY

3 § -A Definitions. As used in this chapter:

4 "Controlled substance" means any substance identified or
5 designated as a hazardous substance and any substance
6 originating from a virgin, waste, or non-waste source, whether
7 or not the process to incorporate the substance into fertilizer
8 is defined as use, recycling, reuse, or disposal substance under
9 any other provisions.

10 "Distribute" means to import, consign, produce, compound,
11 mix, or blend any fertilizer, soil amendment, or liming material
12 or to offer for sale, sell, barter, or supply any fertilizer,
13 soil amendment, or liming material.

14 "Fertilizer" means a substance containing one or more
15 recognized plant nutrients that is used for its plant nutrient
16 content or designated for use or claimed to have value in
17 promoting plant growth. Fertilizers shall include manipulated
18 manure and any other commercial, bulk, custom, and specialty
19 fertilizers. Fertilizers shall not include unmanipulated
20 manure, organic waste-derived material, lime, gypsum, and any
21 other materials the director deems unnecessary.



1 "Hazardous substance" shall have the same meaning as in
2 chapter 128D, and the director may designate any other
3 substance, pollutant, or contaminant as a hazardous substance by
4 rules adopted pursuant to chapter 91.

5 "Label" means all written, printed, or graphic matter on a
6 container or a statement accompanying a fertilizer, soil
7 amendment, or liming material.

8 "Labeling" includes any label, advertisement, brochure,
9 poster, or television or radio announcement used to promote the
10 sale of the fertilizer, soil amendment, or liming material.

11 "Liming material" means all calcium or magnesium containing
12 materials capable of neutralizing soil acidity, including
13 limestone, burnt lime, marl, and any industrial by-products.

14 "Manipulated manure" means substances primarily composed of
15 animal excreta, plant remains, or a mixture of both that has
16 been processed.

17 "Organic waste" means grass clippings, leaves, weeds, bark,
18 plantings, and other vegetative wastes, uncontaminated wood
19 waste from logging and milling operations, food wastes, food
20 processing wastes, or any other materials derived from these
21 wastes through composting.



1 "Product" means any fertilizer, soil amendment, or liming
2 material required to be registered under this chapter.

3 "Soil amendment" means any substance intended to improve
4 the physical characteristics of soil. Soil amendment does not
5 include any composted material, commercial fertilizers,
6 agricultural liming materials, unmanipulated manure, food
7 wastes, food-processing wastes, and any other material the
8 director excludes by rules pursuant to this chapter.

9 "Unmanipulated manure" means substances primarily composed
10 of animal excreta, plant remains, or a mixture of both that has
11 not been processed.

12 "Waste-derived product" means any fertilizer, agricultural
13 mineral, agricultural amendment, or liming material derived in
14 whole or in part from hazardous wastes as defined in chapter
15 342J, solid wastes as defined in chapter 342G, or any other
16 substance designated by rules adopted pursuant to this chapter.
17 Waste-derived product shall not include:

- 18 (1) Biosolids, biosolids-derived products, domestic
19 septage, and domestic wastewater treatment facility
20 solids; or
- 21 (2) Reclaimed water or treated effluent.



1 § -B Hazardous substances; maximum allowable quantity.

2 (a) The director shall establish the maximum allowable quantity
3 for each nonplant-nutrient hazardous substance that may be
4 contained in fertilizers, soil amendments, and liming materials.
5 The maximum allowable limit shall be set at the lowest level
6 detectable by the State's agricultural laboratory or a
7 designated laboratory.

8 The director shall establish the maximum allowable limit
9 for the following controlled substances before establishing such
10 limit for any other substances:

11 (1) Non-nutritive controlled substances: aluminum,
12 antimony, arsenic (total As, including As III and As
13 V), barium, beryllium, cadmium, chromium (total Cr,
14 including Cr III and Cr VI), lead, mercury (total Hg),
15 nickel, silver, thallium, vanadium, and uranium; and

16 (2) Plant nutrients containing: boron, chlorine, cobalt,
17 copper, iron, manganese, molybdenum, selenium, and
18 zinc;

19 provided that if a product label discloses the presence of any
20 of the listed elements, the maximum allowable limit shall be set
21 at an agronomically appropriate level.



1 (b) The director shall review and adjust, if necessary,
2 all maximum allowable levels every five years.

3 **§ -C Registration; process.** (a) No person shall
4 distribute a fertilizer, soil amendment, or liming material
5 unless it has been registered with the department in accordance
6 with the provisions in this chapter.

7 (b) Not less than ninety days before submitting an
8 application for registration, the registrant shall submit a two-
9 pound sample of the product to the department for analysis. The
10 department shall:

- 11 (1) Appropriately sample the submitted product using
12 department-established sampling criteria;
- 13 (2) Appropriately identify and mark each sample;
- 14 (3) Submit each sample for appropriate laboratory
15 analyses, as prescribed by the director; and
- 16 (4) Complete the required analyses within ninety days of
17 receiving the product.

18 (c) The application for product registration shall
19 contain, but not be limited to, the following information:

- 20 (1) The product's name;
- 21 (2) The brand, grade, and content of the product;



1 (3) The department's laboratory analysis report indicating
2 each hazardous substance's concentration and any other
3 laboratory analysis performed by a private laboratory;

4 (4) The registrant's name, address, and phone number;

5 (5) A copy of the labeling for each product;

6 (6) The identification of any product that is a waste-
7 derived fertilizer, soil amendment, or liming material
8 or any product that is derived from a controlled
9 substance; and

10 (7) Information on each ingredient derived from a
11 controlled substance. The information shall include
12 the source of each nutrient, inactive ingredient, and
13 filler.

14 (d) The registrant shall be responsible for submitting all
15 required and requested material to the department and for
16 proving that its product meets all state registration
17 requirements under this chapter.

18 (e) After receiving the completed application, the
19 department shall evaluate all of the information submitted and
20 determine whether the use of the proposed fertilizer, soil
21 amendment, or liming material is consistent with:



1 (1) Integrated solid waste management provisions under
2 chapter 342G;

3 (2) Hazardous waste provisions under chapter 342J;

4 (3) The provisions contained in this chapter; and

5 (4) The Resource Conservation and Recovery Act, title 42
6 United States Code sections 6901 et seq.

7 (f) After receiving a completed application for product
8 registration, the department shall determine within sixty days
9 whether to register the product.

10 (g) The department may cancel, revoke, or refuse to
11 register any fertilizer, soil amendment, or liming material if
12 the department reasonably believes that the registrant has sold,
13 distributed, or used a mislabeled or adulterated fertilizer,
14 soil amendment, or liming material.

15 (h) The director may establish reasonable fees for the
16 registration of products to cover the cost of reviewing,
17 analyzing, and registering the products. Collected fees shall
18 be deposited in the general fund.

19 **§ -D Labeling.** (a) No misleading or false information
20 or statement shall appear on any product labeling, package, or
21 delivery slip. Each product's labeling shall contain an
22 ingredient guarantee. The ingredient guarantee shall include



1 all of the ingredients and chemical compounds combined to create
2 the product.

3 (b) The department shall examine the registration
4 application form and all product labeling for accuracy,
5 appropriateness, and conformity to the requirements in this
6 chapter. In determining whether approval of a labeling
7 statement or ingredient guarantee is appropriate, the department
8 may require the registrant to submit a written statement that
9 describes the laboratory analysis' methodology or any reference
10 material used to support the label's statement or ingredient
11 guarantee.

12 The required analysis of hazardous substances conducted by
13 the department shall constitute prima facie evidence of whether
14 any controlled substances are present.

15 (c) If the application and labeling are in proper form,
16 contain the required information, and properly correspond with
17 the product and the product complies with section -C(e), the
18 product shall be registered by the department.

19 (d) The director may establish additional labeling
20 requirements necessary to protect the State's consumers,
21 farmers, and environment.



1 § -E **Periodic sampling and analysis.** (a) At any time
2 it may deem necessary, the department may inspect, sample, or
3 analyze any registered fertilizer, soil amendment, or liming
4 material to determine whether the product is in compliance with
5 the provisions of this chapter.

6 (b) Any citizen may submit one sample of any product under
7 this chapter per calendar year for laboratory analysis. There
8 shall be no charge for the once-a-year analysis, and the citizen
9 shall sign a certifying statement for analysis. The statement
10 shall state: "I certify that I have not previously submitted a
11 sample for free laboratory analysis during the current calendar
12 year."

13 If the sample is collected in accordance with the following
14 procedures, the sample may be analyzed for its controlled
15 substance content:

16 (1) At least five days before collecting a sample, the
17 citizen shall notify the manufacturer or seller in
18 writing, at the address on the product's registration
19 application, of the citizen's intention to collect a
20 sample and to request the manufacturer or seller to
21 have a representative present when the sample is
22 collected;



1 (2) The sample shall be collected in the presence of a
2 representative of the manufacturer or seller and two
3 disinterested witness over the age of eighteen. If
4 the manufacturer or seller refuses to witness the
5 sample collection, the sample shall be collected in
6 the presence of three disinterested witnesses over the
7 age of eighteen; provided that the sample shall be
8 taken using the sample collection protocol as the
9 department; and

10 (3) A department-approved sampling certificate and chain
11 of custody form shall be signed by the citizen, all of
12 the disinterested witnesses, and, if present, the
13 manufacturer or seller's representative witnessing the
14 sample collection process.

15 (c) Samples collected following the procedures prescribed
16 by this section shall be considered with the same weight as
17 those samples collected by the department.

18 (d) Not more than two samples shall be collected from a
19 manufacturer's plant in one calendar year, regardless of if the
20 sample is collected by a citizen or by the department; except by
21 a clear showing that the manufacturer's treatment method has
22 changed significantly since the last sample was collected.

1 **§ -F Adulteration or mislabeling.** (a) No person shall
2 distribute an adulterated fertilizer, soil amendment, or liming
3 material. A product is adulterated if:

4 (1) It contains a substance in any amount that may injure
5 a human, plant, animal, or the environment when
6 applied in accordance with the directions for use on
7 its label;

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

13 (3) The quantity of any controlled substance exceeds the
14 maximum allowable quantity under the section -B.

15 (b) No person shall knowingly distribute a mislabeled
16 fertilizer, soil amendment, or liming material. A product is
17 mislabeled if:

18 (1) A waste-derived fertilizer, soil amendment, or liming
19 material is not properly labeled as such; or

20 (2) The labeling differs from the labeling approved by the
21 department during the registration process.



1 **§ -G Enforcement.** (a) If the director determines that
2 any person has violated or is violating any provision of this
3 chapter or any rule adopted pursuant to this chapter, the
4 director may do one or more of the following:

- 5 (1) Issue an order assessing a civil penalty for any past
6 or current violation;
- 7 (2) Issue an order to stop the sale or use of any product;
- 8 (3) Require compliance immediately or within a specified
9 time period;
- 10 (4) Hold a product at a designated place when the product
11 is offered for sale in violation of any provision of
12 this chapter; or
- 13 (5) Commence a civil action in circuit court for an
14 appropriate relief. The action shall be brought in
15 the circuit where the violation occurred, the person
16 resides, or the person's principal place of business
17 is maintained. Appropriate relief may include seizure
18 or disposal of the non-compliant product and any
19 associated costs or expenses; provided that the
20 defendant is given an opportunity to process or
21 relabel the product to make it comply with this
22 chapter.

1 (b) Any order issued by the department may be rescinded in
2 writing when all provisions of this chapter have been complied
3 with and all costs and expenses owed to the department have been
4 paid.

5 (c) The cost of disposing any non-compliant product shall
6 be the responsibility of the distributor, owner, or custodian of
7 the fertilizer, soil amendment, or liming material, unless that
8 distributor, owner, or custodian is only transporting the
9 product. The consumer or transporter shall not be responsible
10 for disposal costs.

11 **§ -H Penalties.** Any person who violates this chapter or
12 rule adopted pursuant to this chapter may be fined up to \$7,000
13 for each separate offense. Each day of each violation shall
14 constitute a separate offense.

15 **§ -I Citizen's suits.** (a) Except as provided in
16 subsection (b), any person may commence a civil action on the
17 person's own behalf against any person who is alleged to be in
18 violation of any provision of this chapter.

19 (b) No action may be commenced under subsection (a):

20 (1) Within sixty days of the plaintiff giving notice of
21 the violation to:

22 (A) The director; and



1 (B) Any alleged violator of this chapter; and
2 (2) If the State has commenced and is diligently
3 prosecuting a civil action to require compliance with
4 any provision of this chapter.

5 **§ -J Public disclosure.** (a) The department shall
6 publish a report of the following information at least once a
7 year:

8 (1) Information on each fertilizer, soil amendment, and
9 liming material currently on and added to the
10 register;

11 (2) Information on each fertilizer, soil amendment, and
12 liming material registered with the department; and

13 (3) Summarized results of any analysis performed on the
14 department's fertilizer, soil amendment, or liming
15 material samples. The summary shall include every
16 chemical concentration that exceeds the maximum
17 allowable level set by the department.

18 (b) Copies of the report shall be available at the
19 department during regular business hours, and the report shall
20 also be available on the department's website.

21 (c) The department shall submit a report to the
22 legislature biennially. The report shall summarize the levels

1 of nonnutritive substances in fertilizers and the results from
2 the department's product testing.

3 § -K Powers and duties of the department. The
4 department shall adopt rules pursuant to chapter 91 to implement
5 the provisions in this chapter."

6 SECTION 3. In codifying the new sections added by section
7 2 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

10 SECTION 4. This Act shall take effect upon its approval.
11

INTRODUCED BY:

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Report Title:

Fertilizer, Soil Amendment, Liming Material; Registration

Description:

Requires all fertilizers, soil amendments, and liming materials to be registered with DOH before being distributed within the State.

