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SENATE BILL NO. 1055

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 3.2-3600, 3.2-3602.1, 3.2-3610, and 3.2-3611 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-3611.1, relating to fertilizer and deicing agents; regulation of application; penalty. Report.

Patrons—Stuart, McDougle, Whipple, Marsden, McWaters and Northam

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3600, 3.2-3602.1, 3.2-3610, and 3.2-3611 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-3611.1 as follows:

§ 3.2-3600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Brand" means a term, design, trademark or product name under which a regulated product is distributed.

"Bulk" means in nonpackaged form.

"Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

"Commercial fertilizer" means a fertilizer distributed for farm use, or for any other use, other than any specialty fertilizer use.

"Compost" means a biologically stable material derived from the composting process.

"Composting" means the biological decomposition of organic matter. It may be accomplished by mixing and piling so as to promote aerobic decay, anaerobic decay, or both aerobic and anaerobic decay.

"Contractor-applicator" means any person required to hold a permit to distribute or apply any regulated product pursuant to § 3.2-3608.

"Custom medium" means a horticultural growing medium that is prepared to the exact specifications of the person who will be planting in the medium and delivered to that person without intermediate or further distribution.

"Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which may result from a lack of nutrient ingredients, or from lack of uniformity.

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter, the chemical or physical characteristics of a regulated product, or to offer for sale, sell, barter, warehouse or otherwise supply regulated product in the Commonwealth.

"Distributor" means any person who distributes.

"Established turfgrass" means turfgrass that has been established and growing for 12 months or more.

"Fertilizer" means any substance containing one or more recognized plant nutrients, which is used for its plant nutrient content, and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and other products exempted by regulation.

"Fertilizer material" means a fertilizer that: (i) contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), phosphate (P2O5) and potash (K2O); (ii) has 85 percent or more of its plant nutrient content present in the form of a single chemical compound; or (iii) is derived from a plant or animal residue, a by-product, or a natural material deposit that has been processed or conditioned in such a way that its content of plant nutrients has not been materially changed, except by purification and concentration.

"Grade" means the percentage of total nitrogen (N), available phosphate (P2O5) and soluble potash (K2O), stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis, except that fertilizer materials, specialty fertilizers, bone meal, manures and similar raw materials may be guaranteed in fractional units.

"Guaranteed analysis" means that information required by this chapter to be displayed on the label of a regulated product.

"Guarantor" means the person whose name appears on the label of a regulated product.

"Horticultural growing medium" means any substance or mixture of substances that is promoted as or is intended to function as an artificial soil for the managed growth of horticultural crops.

"Industrial co-product" means a product derived from an industrial process that meets the definition

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59 of fertilizer, soil amendment, soil conditioner or horticultural growing medium.

60 "Investigational allowance" means an allowance for variations, inherent in the taking, preparation,
61 and analysis of an official sample.

62 "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or
63 a statement accompanying a regulated product, including an invoice.

64 "Labeling" means all written, printed, or graphic matter, upon or accompanying any regulated
65 product, including invoices, advertisements, brochures, posters, and television and radio announcements,
66 used in promoting the sale of the regulated product.

67 "Licensee" means the person who receives a license to distribute any regulated product under the
68 provisions of this chapter.

69 "Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in any
70 way alters the chemical or physical characteristics of any regulated product.

71 "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

72 *"Newly established turfgrass" means a turfgrass area that was first established on bare ground by*
73 *seeding or sodding within the preceding 12-month period, or a bare spot that was reseeded or resodded*
74 *within the preceding 12-month period in an existing turfgrass area.*

75 "Official analysis" means the analysis of an official sample, made by the Commissioner.

76 "Official sample" means the sample of regulated product taken by the Commissioner, and designated
77 as "official" by the Board.

78 *"Organic" means derived from manure, green manure, biosolids, compost, or other plant or animal*
79 *residues that contain plant nutrients.*

80 "Percent" or "percentage" means the percentage by weight.

81 "Primary nutrient" includes total nitrogen (N), available phosphate (P205), and soluble potash (K20).

82 "Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of
83 measurement of a commodity.

84 "Registrant" means the person who registers regulated products, under the provisions of this chapter.

85 "Regulated product" means any product governed by this chapter, including any fertilizer, specialty
86 fertilizer, soil amendment, soil conditioner, and horticultural growing medium.

87 "Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared
88 or sold for manurial, soil enriching, or soil corrective purposes, or intended to be used for promoting or
89 stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or
90 producing any chemical or physical change in the soil. The following are exempt from the definition of
91 "soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures, soil
92 conditioners, horticultural growing media, agricultural liming materials, unmixed mulch and unmixed
93 peat.

94 "Soil conditioner" means any substance or mixture of substances imported, manufactured, prepared or
95 sold for soil corrective purposes including polyelectrolytes such as complex vinyl and acrylic compounds
96 and certain cellulose and lignin derivatives.

97 "Specialty fertilizer" means a fertilizer distributed for nonfarm use, including use on home gardens,
98 lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

99 "Stop sale, use, removal, or seizure order" means an order that prohibits the distributor from selling,
100 relocating, using, or disposing of a lot of regulated product, or portion thereof, in any manner, until the
101 Commissioner or the court gives written permission to sell, relocate, use or dispose of the lot of
102 regulated product or portion thereof.

103 "Ton" means a unit of 2000 pounds avoirdupois weight.

104 *"Turfgrass" means selected grass species planted or sodded and managed for such uses as public*
105 *and private lawns, golf courses, office parks, and rights-of-way.*

106 *"Turfgrass fertilizer" means any fertilizer sold or distributed for nonagricultural use. Turfgrass*
107 *fertilizer does not include fertilizer products intended for specific gardening, tree, shrub, and indoor*
108 *plant application.*

109 *"Turfgrass maintenance fertilizer" means any fertilizer intended for nonagricultural use on*
110 *established turfgrass.*

111 "Unmanipulated manure" means substances composed of the excreta of domestic animals, or
112 domestic fowls, that has not been processed or conditioned in any manner including processing or
113 conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any
114 material or materials (other than those that have been used for bedding, sanitary or feeding purposes for
115 such animals or fowls), or by any other means. § 3.2-3602.1. Board authorized to adopt regulations for
116 the application of regulated products to nonagricultural property; civil penalty.

117 § 3.2-3602.1. Board authorized to adopt regulations for the application of regulated products to
118 nonagricultural property; civil penalty.

119 A. The Board shall adopt regulations to certify the competence of contractor-applicators and,
120 licensees who apply any regulated product to nonagricultural lands. The regulations shall establish (i)

training requirements and (ii) proper nutrient management practices in accordance with § 10.1-104.2, and including soil analysis techniques, equipment calibration, and the timing of the application, and persons acting on behalf of the Commonwealth or any locality thereof. The regulations shall require:

1. Contractor-applicators and licensees to become trained and certified in nutrient management pursuant to the nutrient management training and certification program operated by the Department of Conservation and Recreation pursuant to § 10.1-104.2;

2. Contractor-applicators and licensees, and any employees and agents thereof, to apply regulated product in accordance with § 10.1-104.2 and any regulations adopted pursuant thereto;

3. Agencies, localities, and political subdivisions of the Commonwealth that apply regulated product to nonagricultural land to ensure that supervisory personnel become trained and certified in nutrient management pursuant to the nutrient management training and certification program operated by the Department of Conservation and Recreation pursuant to § 10.1-104.2;

4. Agencies, localities, and political subdivisions of the Commonwealth, and any employees and agents thereof, to apply regulated product in accordance with § 10.1-104.2 and any regulations adopted pursuant thereto;

5. A prohibition on the application of phosphorus to turfgrass without a soil test demonstrating the need for such application;

6. A prohibition on the application of nitrogen and phosphorus to parking lots, roadways, sidewalks, and other paved or impervious surfaces;

7. The establishment of standards for soil analysis techniques, equipment calibration, and the timing of the application; and

8. The establishment of reasonable fees to support the administration and enforcement of the regulations.

B. The Board may impose a civil penalty of up to \$250 on any contractor-applicator or licensee who fails to comply with the regulations. The amount of the civil penalty shall be \$250 for a first violation, \$1,000 for a second violation, and \$2,500 for any additional violation. All penalties assessed pursuant to this section shall be paid into the special fund established in § 3.2-3617.

C. The Board shall form a technical advisory committee of stakeholders. The Board shall consult with the technical advisory committee of stakeholders and the Department of Conservation and Recreation in the development of the regulations.

D. Contractor-applicators and licensees who apply any regulated product to nonagricultural lands shall comply with the regulations within 12 months of the effective date of the regulations.

§ 3.2-3610. Statistical reports.

A. For commercial fertilizer:

1. Any person distributing or selling commercial fertilizer to a nonlicensee shall furnish the Commissioner a ~~monthly~~ *an annual* report showing:

- a. The county or city of the nonlicensee consignee;
- b. The amounts (expressed in tons, or decimal portions) of each grade of fertilizer; and
- c. The form in which the person distributed the fertilizer (e.g., in bags, bulk, or in liquid form).

2. *Persons applying commercial fertilizer shall furnish the Commissioner with an annual report providing information deemed by the Commissioner to be necessary for the implementation of the total maximum daily load for the Chesapeake Bay or any other waters of the Commonwealth. Such reports shall include the total acreage receiving nitrogen and phosphorus, by county or city, in accordance with any nutrient management standards and criteria developed by the Department of Conservation and Recreation.*

3. This information shall be submitted in the following form and shall specify shipments made during the preceding ~~month~~ *year on or before February 1*:

a. *For applicators, a summary report on a form prescribed by the Commissioner that includes the information described in subdivision A 2;*

~~A b.~~ *For distributors and sellers, a summary report on a form prescribed by the Commissioner, on or before the 20th day of each month that includes information described in subdivision A 2; or*

~~b. c.~~ *A summary report by electronic transfer, utilizing the Uniform Fertilizer Tonnage Reporting System. Prior to using the electronic transfer method, the person responsible for submitting the monthly annual tonnage report shall make arrangements with the Commissioner for the Commissioner's receipt of the report by such method.*

~~3.4.~~ *If the monthly annual report is not filed by within 15 days after the due date, a late fee of \$35 \$250 shall be assessed against the licensee or applicator.*

B. For all other regulated products:

1. The person distributing or selling such products to a nonlicensee shall furnish the Commissioner an annual report showing:

- a. The county or city of the nonlicensee consignee; and

182 b. The amounts (expressed in tons, or decimal portions) of each grade under a given brand of
183 product.

184 2. Any person listed in subdivision B 1 who fails to file this report by August 1 shall pay a late fee
185 of \$35 to the Commissioner.

186 § 3.2-3611. Labeling.

187 A. The manufacturer or guarantor of any regulated product distributed in the Commonwealth shall
188 affix a label to the container or provide an invoice at the time of delivery for a bulk regulated product
189 that states in clear, legible and conspicuous form, in the English language, the following information:

190 1. The quantity statement;

191 2. The grade under a given brand. The grade shall not be required when no primary nutrients are
192 claimed;

193 3. The guaranteed analysis, which shall:

194 a. For fertilizers, conform to the following, with the percentage of each plant nutrient stated as
195 follows:

196 (1) Total Nitrogen (N) %

197 Available Phosphate (P205) %

198 Soluble Potash (K20) %

199 (2) For unacidulated mineral phosphate materials and basic slag, bone, tankage, and other organic
200 phosphate materials, the available phosphate (P205), or the degree of fineness, or both, may also be
201 guaranteed;

202 (3) Guarantees for plant nutrients other than nitrogen (N), phosphate (P205), and potash (K20) shall
203 be expressed in the form of the element. A statement of the sources of nutrients including oxides, salt,
204 and chelates, may be required on the application for registration of specialty fertilizers, and may be
205 included as a parenthetical statement on the label. Degree of acidity or alkalinity (pH), beneficial
206 substances, or compounds determinable by laboratory methods also may be guaranteed by permission of
207 the Commissioner and with the advice of the Director of the Virginia Experiment Station. When any
208 degree of acidity or alkalinity (pH), beneficial substances, or compounds are guaranteed, they shall be
209 subject to inspection and analysis in accord with the methods and regulations prescribed by the Board;

210 b. For soil amendments, consist of a list of ingredients, and may include a statement of naturally
211 occurring nutrient levels;

212 c. For soil conditioners, including polyelectrolytes, contain the following information in the following
213 form:

214 (1) Name of active ingredient %

215 (name and list all)

216 (2) Total other ingredients %

217 d. For horticultural growing media, include a list of ingredients and other guarantees as required by
218 regulation;

219 e. When compost derived from sewage sludge, hazardous materials, unrendered animals or poultry or
220 their parts, or other source material specified in regulations established by the Board is used as an
221 ingredient, identify the source material of the compost; and

222 f. *The following statement must be affixed to all bags of turf fertilizer, and for bulk sales of turf*
223 *fertilizer, the following statement must be clearly visible on the invoice: "Do not apply near water,*
224 *storm drains or drainage ditches. Do not apply if heavy rain is expected. Apply this product only to*
225 *your lawn or garden, and sweep any product that lands on the driveway, sidewalk, or street, back onto*
226 *your lawn or garden.";* and

227 g. Include a list of such other ingredients as may be required by the Board through regulation.

228 4. The name and address of the registrant or licensee.

229 B. A commercial fertilizer that is formulated according to specifications provided by a consumer
230 prior to mixing, or any fertilizer formulated for a consumer, shall be labeled to show: (i) the quantity
231 statement; (ii) the guaranteed analysis; and (iii) the name and address of the distributor or the licensee.

232 C. For horticultural growing media, a statement of added fertilizers, if any, shall be listed on the
233 registration document and customer sales invoice.

234 § 3.2-3611.1 *Point-of-sale restrictions for lawn fertilizer or turf fertilizer; exemptions.*

235 A. *No commercial entity shall:*

236 1. *Effective July 1, 2012, display for sale any fertilizer that is labeled "turf maintenance fertilizer" or*
237 *otherwise described as a product intended for established turfgrass that contains more than zero percent*
238 *phosphorus or other phosphorus-containing compound. Fertilizer containing greater than zero percent*
239 *phosphorus or other phosphorus-containing compound may be sold in a manner that limits user access,*
240 *such as product placements that require the assistance of sale personnel;*

241 2. *Effective July 1, 2012, sell any deicing agent containing urea or other forms of nitrogen or*
242 *phosphorus intended for application to parking lots, roadways, and sidewalks or other paved surfaces;*

243 3. *Effective July 1, 2012, sell any fertilizer without prominently displaying at the site where fertilizers*

are sold, a sign that refers to the requirements of this section and describes the effects of excessive fertilizer application on state waters. A commercial entity shall be deemed to have complied with this requirement by displaying a sign consistent with a sample sign that the Department of Conservation and Recreation shall design and that the Department shall make available.

B. Any person who violates any provision of this section may be assessed a civil penalty by the Board not to exceed \$250 per violation per day. The penalty shall not exceed a total of \$2,500 for a 365-day period. The amount of any civil penalty shall be paid into the Feed, Lime, Fertilizer, and Animal Remedies Fund established pursuant to § 3.2-3617.

C. The prohibitions on the sale of lawn fertilizer or turf fertilizer under subsection A shall not apply to the following:

1. Fertilizer sold for newly established turfgrass areas;
2. Fertilizer sold for turfgrass areas where soil tests performed within the three years preceding the sale confirm that the phosphorus levels indicate the need for phosphorus fertilizer applications;
3. Fertilizer sold for gardens, including vegetable and flower, trees, and shrubs, and indoor applications, including greenhouses;
4. Fertilizer that consists of manipulated animal or vegetable manure that includes no more than 0.25 pounds of phosphorus per 1,000 square feet when applied pursuant to the instructions on the container; and

5. Yard waste compost or other similar materials that are primarily organic in nature and are applied to improve the physical condition of the soil.

2. That the Department of Agriculture and Consumer Services shall provide, no later than December 15, 2011, a report concerning the use of slowly-available nitrogen in fertilizer material to the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources. Such report shall review (i) an assessment of the most effective means to encourage the use of slowly-available nitrogen in fertilizers, (ii) the most appropriate percentages of slowly-available nitrogen to be included in fertilizers, and (iii) other issues related to the use of slowly-available nitrogen in fertilizers. The Department shall consult with the Department of Conservation and Recreation and, at its discretion, may convene a technical advisory committee of stakeholders concerning the development and content of the report.