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SENATE BILL NO. 248

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 25, 2022)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 3.2-3600 and 3.2-3611 of the Code of Virginia, relating to anaerobic digestion; digestate.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3600 and 3.2-3611 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-3600. Definitions.

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

"AAPFCO" means the Association of American Plant Food Control Officials.

"Anaerobic digestion" means the controlled anaerobic biological decomposition of organic waste material to produce biogas and digestate.

"AOAC International" means the Association of Analytical Communities, formerly the Association of Official Analytical Chemists.

"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 through a process that inhibits pathogens, viable weed seeds, and odors, accomplished by mixing and piling so as to promote aerobic decay, anaerobic decay, or both aerobic and anaerobic decay.

"Contractor-applier" means any person required to hold a permit to 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.

"Digestate" means a biologically stable material derived from the process of anaerobic digestion.

"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.

"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 (P205) and potash (K20); (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 (P205) and soluble potash (K20), 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 the minimum percentage of plant nutrients claimed as 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 any industrial waste or byproduct, including exceptional quality biosolids and waste treatment residuals, that can be beneficially recycled for its plant nutrient content or

60 soil amendment characteristics, that meets the definition of fertilizer, soil amendment, or horticultural
61 growing medium.

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

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

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

69 "Lawn fertilizer" means any fertilizer intended for nonagricultural use on newly established turf areas
70 from sod or seed during the first growing season, turf areas being repaired or renovated, and turf areas
71 where soil tests performed within the past three years indicate a nutrient deficiency.

72 "Lawn maintenance fertilizer" means any fertilizer intended for the nonagricultural routine
73 maintenance of turf.

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

76 "Lot" means an identifiable quantity of produced material that can be sampled officially according to
77 AOAC International procedures, up to and including a freight car load or 50 tons maximum, or that
78 amount contained in a single vehicle, or that amount delivered under a single invoice.

79 "Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically
80 dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or
81 otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil
82 or plant additive.

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

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

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

87 "Official sample" means the sample of regulated product taken by the Commissioner.

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

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

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

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

93 "Regulated product" means any product governed by this chapter, including any fertilizer, specialty
94 fertilizer, soil amendment, *digestate*, and horticultural growing medium.

95 "Soil amendment" means any substance or mixture of substances intended to improve the physical,
96 chemical, biochemical, biological, or other characteristics of the soil. The following are exempt from the
97 definition of "soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures,
98 horticultural growing media, agricultural liming materials, unmixed mulch and unmixed peat.

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

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

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

106 "Turf" means nonagricultural land that is planted as closely mowed, managed grass and includes golf
107 courses, parks, cemeteries, publicly owned lands, and residential, commercial, or industrial property.

108 "Unmanipulated manure" means substances composed of the excreta of domestic animals, or
109 domestic fowls, that has not been processed or conditioned in any manner including processing or
110 conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any
111 material or materials (other than those that have been used for bedding, sanitary or feeding purposes for
112 such animals or fowls), or by any other means.

113 § 3.2-3611. Labeling.

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

117 1. The quantity statement;

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

120 3. The guaranteed analysis, which shall:

121 a. For fertilizers, conform to the requirements adopted by AAPFCO in its Official Publication in the

Rules and Regulations-Fertilizer section of the Officially Adopted Documents, as amended, with the percentage of each plant nutrient stated as follows:

- | | | |
|-----|----------------------------|--------|
| (1) | Total Nitrogen (N) | _____% |
| | Available Phosphate (P205) | _____% |
| | Soluble Potash (K20) | _____% |

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

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

b. For soil amendments, conform to the requirements adopted by AAPFCO in its Official Publication in the Labeling section of the Uniform Soil Amendment Bill of the Officially Adopted Documents, as amended;

c. For horticultural growing media, include a list of ingredients and other guarantees as required by regulation and a statement of added fertilizers, if any;

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

e. When an industrial co-product is used as an ingredient, identify the source material and percentage or other acceptable unit; and

f. Include a list of such other ingredients and guarantees as may be required by the Board through regulation.

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

5. Directions for use and warning statements in accordance with the standards adopted by AAPFCO in its Officially Adopted Documents of the Official Publication, as amended.

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

C. [Repealed.]

D. Beginning December 31, 2013, lawn fertilizer and lawn maintenance fertilizer shall be labeled as follows:

"DO NOT APPLY NEAR WATER, STORM DRAINS, OR DRAINAGE DITCHES. DO NOT APPLY IF HEAVY RAIN IS EXPECTED. APPLY THIS PRODUCT ONLY TO YOUR LAWN/GARDEN, AND SWEEP ANY PRODUCT THAT LANDS ON THE DRIVEWAY, SIDEWALK, OR STREET, BACK ONTO YOUR LAWN/GARDEN."