

SENATE BILL NO. 248

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources

on _____)

(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.

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

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

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

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

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

38 "Distributor" means any person who distributes.

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

43 "Fertilizer material" means a fertilizer that: (i) contains important quantities of no more than one
44 of the primary plant nutrients: nitrogen (N), phosphate (P205) and potash (K20); (ii) has 85 percent or
45 more of its plant nutrient content present in the form of a single chemical compound; or (iii) is derived
46 from a plant or animal residue, a by-product, or a natural material deposit that has been processed or
47 conditioned in such a way that its content of plant nutrients has not been materially changed, except by
48 purification and concentration.

49 "Grade" means the percentage of total nitrogen (N), available phosphate (P205) and soluble potash
50 (K20), stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis,
51 except that fertilizer materials, specialty fertilizers, bone meal, manures and similar raw materials may be
52 guaranteed in fractional units.

53 "Guaranteed analysis" means the minimum percentage of plant nutrients claimed as required by
54 this chapter to be displayed on the label of a regulated product.

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

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

58 "Industrial co-product" means any industrial waste or byproduct, including exceptional quality
59 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,
65 or 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
70 areas from sod or seed during the first growing season, turf areas being repaired or renovated, and turf
71 areas 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
77 to 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 or
82 plant additive.

83 "Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in
84 any 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
90 (K20).

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

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

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

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

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

103 "Stop sale, use, removal, or seizure order" means an order that prohibits the distributor from
104 selling, relocating, using, or disposing of a lot of regulated product, or portion thereof, in any manner,

105 until the Commissioner or the court gives written permission to sell, relocate, use or dispose of the lot of
106 regulated product or portion thereof.

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

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

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

115 **§ 3.2-3611. Labeling.**

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

119 1. The quantity statement;
120 2. The grade under a given brand. The grade shall not be required when no primary nutrients are
121 claimed;

122 3. The guaranteed analysis, which shall:

123 a. For fertilizers, conform to the requirements adopted by AAPFCO in its Official Publication in
124 the Rules and Regulations-Fertilizer section of the Officially Adopted Documents, as amended, with the
125 percentage of each plant nutrient stated as follows:

- a (1) Total Nitrogen (N) _____ %
- b Available Phosphate (P205) _____ %
- c Soluble Potash (K20) _____ %

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

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

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

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

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

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

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

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

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

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

156 C. [Repealed.]

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

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

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