

## PHOSPHATE FERTILIZER RESTRICTIONS

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5368 as enrolled**

**Public Act 299 of 2010**

**Sponsor: Rep. Terry Brown**

**House Committee: Great Lakes and Environment**

**Senate Committee: Natural Resources and Environmental Affairs**

**Complete to 1-24-11**

## A SUMMARY OF HOUSE BILL 5368 AS ENROLLED

The bill amends Part 85 (Fertilizers) of the Natural Resources and Environmental Protection Act to restrict the application of a fertilizer labeled as containing available phosphate to land considered "turf," primarily lawns and golf courses.

("Turf" means "land, including residential, commercial, or industrial property, golf courses, or publicly owned land, that is planted in closely mowed, managed grass, except land used in the operation of a commercial farm.")

As enrolled, the bill does the following things:

- Prohibits, as of January 1, 2012, the application of any fertilizer that is labeled as containing available phosphate to turf, unless an exception applies.
- Allows, as general exceptions, the application of a phosphate fertilizer to turf in any of the following circumstances: (1) when a test has shown a need for it; (2) the turf is in its first growing season; or (3) the fertilizer is finished sewage sludge, organic manure, or manipulated manure, and it is applied at an allowed rate.
- Allows the application of phosphate fertilizer to a golf course in any of the following circumstances: (1) the golf course has been certified after its staff completed an approved training course; (2) when a test has shown the need for it and the fertilizer is applied at an allowed rate; or (3) the turf is in its first growing season and the fertilizer is applied at an allowed rate.
- Prohibits the application of any fertilizer on turf located within 15 feet of surface water, unless there is a vegetative buffer between the turf and surface water or certain equipment is used to apply the fertilizer.
- Prohibits the cleaning of turf fertilizer spreaders in a manner that allows the wash water to discharge directly into waters of the state, including drains governed by the Drain Code.
- Requires fertilizer spilled on an impervious surface (e.g., paved highway, street, sidewalk, driveway, or parking lot) to be cleaned up promptly.

- Prohibits applying fertilizer to turf when soil is frozen or saturated with water.
- Classifies a violation or attempted violation of one of the new restrictions as a civil infraction, not a crime, subject to a maximum civil fine of \$1,000, or a lower maximum fine of \$50, if the infraction was committed by the owner or renter of a single-family residential parcel, or other property with no more than four acres of turf, or by a family member or someone else living on the property.
- Allows local phosphate fertilizer ordinances that are in effect when the bill is enacted to be maintained and enforced.

MCL 324.8501 et al

## **FISCAL IMPACT:**

The Michigan Department of Agriculture indicates that additional costs to the department would depend primarily on the number of complaints arising under the proposed amendments to the act, and related department education and investigation efforts. The bill does provide for fines for violations of the proposed act with fine revenue dedicated to the Fertilizer Control Fund. Fines for "residential" or "property owner" violations would be limited to \$50. Fines for other than "residential" or "property owner" violations could be up to \$1,000 per violation or attempted violation. Under current provisions of Part 85 of Natural Resources and Environmental Protection Act, the Department only collects an average of \$3,000 per year in fertilizer regulatory fines—based on the average for the three year period ending September 30, 2009. The Department appears to have collected no fertilizer regulatory fine revenue in FY 2009-10. The Department believes that fine revenue under the proposed amendments to the act would be similarly minimal.

## **DETAILED SUMMARY:**

Application to turf. [§8512b(1)] As of January 1, 2012, fertilizer labeled as containing the plant nutrient available phosphate (P<sub>2</sub>O<sub>5</sub>) may not be applied to turf, unless an exception applies. ("Turf" means "land, including residential, commercial, or industrial property, golf courses, or publicly owned land, that is planted in closely mowed, managed grass, except land used in the operation of a commercial farm.")

[Note: In Part 85, MCL 324.8501(m), the term "fertilizer" means "a substance containing 1 or more recognized plant nutrients, which substance 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, wood ashes, and other materials exempted by rules promulgated under this part." In this summary, the phrase "fertilizer labeled as containing the plant nutrient available phosphate (P<sub>2</sub>O<sub>5</sub>)," found throughout the bill, is shortened to "phosphate fertilizer."

General exceptions. [§8512b(2)-(5)] In general, as described in the following paragraphs, phosphate fertilizer may be applied to turf only if (1) soil testing has shown a need for it, (2) the turf is new; or (3) the fertilizer is sewage sludge, organic manure, or manipulated manure. (Additional golf course exceptions are described below.)

Deficient soil exception. [§8512b(2)] If a tissue, soil, or other test performed within the past three years by an experienced laboratory using recognized national standards has indicated that the soil's level of available phosphate is insufficient to establish or grow healthy turf, phosphate fertilizer may be applied at the rate necessary to correct the deficiency.

New turf exception. [§8512b(3)] If no testing has been performed, and new turf is being established using seed or sod, and the turf is in its first growing season at the site, phosphate fertilizer may be applied at a rate no higher than the standard rate for the establishment of new turf grass set by the director of the Department of Agriculture after consultation with the Michigan State University Extension.

Sewage sludge & manure. [§8512b(4)] A finished sewage sludge product, organic manure, or manipulated manure may be applied to turf at a rate of not more than 0.25 pounds of phosphorus per 1,000 square feet at any one time.

("Finished sewage sludge product" means "a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment or other means."

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

"Organic manure" means "manure derived solely from living organisms without manipulation."

"Sewage sludge" means "sewage sludge generated in the treatment of domestic sewage, other than only septage or industrial waste.")

Golf course exceptions, generally. [§8512b(5)(a)-(c)] In addition, phosphate fertilizer may be applied to a golf course in one or more of the following circumstances: (1) the golf course has been certified as described below, (2) soil testing has shown a need for the fertilizer, or (3) new turf is being established, as described below.

Golf course certification. [§8512b(5)(a)] If a golf course has been certified by an organization as a result of its staff having successfully completed a training program approved by the director of the Department of Agriculture, a phosphate fertilizer may be applied at the golf course. The director is required to approve a training program if: (1) it is a continuing program, (2) it adequately addresses best management practices for the use of phosphate fertilizer, and (3) it requires trainees to demonstrate successful implementation of the best management practices.

Deficient soil on golf course. [§8512b(5)(b)] If a tissue, soil, or other test performed within the past three years by an experienced laboratory using recognized national standards has indicated that the soil's level of available phosphate is insufficient to establish or grow healthy golf course turf, phosphate fertilizer may be applied at the rate necessary to correct the deficiency.

New turf on golf courses. [§8512b(5)(c)] If new turf is being established using seed or sod, the turf is in its first growing season at the site, and no testing has been performed, a golf course may apply a phosphate fertilizer to the turf at a rate no higher than the "rate necessary for new golf course turf grass establishment."

Application near surface water. [§8512b(6)] The bill prohibits the application of fertilizer to turf within 15 feet of surface water unless either (1) a continuous natural vegetative buffer at least 10-feet-wide separates the turf from the surface water; or (2) the fertilizer is spread using a spreader guard, a deflector shield, or a drop spreader not closer than three feet from the surface water. [Note: this section appears to apply to any fertilizer as defined in Part 85, not only those containing phosphorus.]

Spreader cleaning. [§8512b(7)] The bill prohibits cleaning a spreader used to apply fertilizer to turf in a manner allowing wash water from the spreader to discharge directly into waters of the state, including drains governed by the Drain Code of 1956. [Note: this section apparently applies to cleaning a spreader used to apply any fertilizer to turf, not only those containing phosphorus.]

Website posting. [§8512b(8)] The Department of Agriculture is required to post information on its website about some of the bill's provisions—subsections (1)-(5) of Section 8512b—and to publicize the availability of this information by appropriate means.

Impervious surfaces. [§8512f(1)] The bill requires anyone who releases fertilizer on an impervious surface to promptly contain the fertilizer and to then either apply the fertilizer legally to turf or to another appropriate site, or to return it to an appropriate container. ("Impervious surface" means a "paved highway, street, sidewalk, parking lot, driveway, or other outdoor structure that prevents infiltration of water into the soil.)

Frozen or saturated soil. [§8512f(2)] The bill prohibits applying fertilizer to turf when soil is frozen or saturated with water.

Consumer information. [§8512g] The bill allows, but doesn't require, the Department of Agriculture to approve consumer information about restrictions on the use of phosphate lawn fertilizers, on recommended best practices for phosphate lawn fertilizers, and on best management practices for other residential uses of phosphorus, in consultation with fertilizer industry representatives, fertilizer retailers, statewide environmental organizations, lake groups, and other interested parties. The consumer information must be in a format suitable for use by the general public or for posting and distribution by retailers.

Local ordinances. [§8517] The bill specifically allows the maintenance and enforcement of a local ordinance regulating or prohibiting the application of a phosphate fertilizer to turf only if it is in effect on the enactment date of the bill, notwithstanding an existing provision (Section 8517(1), MCL 324.8517(1)) that preempts local fertilizer ordinances except in specified circumstances.

The bill also adds the word "otherwise" to current subsection (3)(a), and changes the word "regulate" to "administer" in current subsection (6) of Section 8517, MCL 324.8517(6).

Civil infractions; civil fines. [§8520] The bill classifies violations or attempted violations of Sections 8512b (improperly applying a phosphate fertilizer to turf, applying fertilizer too close to surface water, or improperly cleaning a fertilizer spreader ) and 8512f (failing to contain a fertilizer released on an impervious surface, or improperly applying a fertilizer to turf on frozen or saturated soil) as state civil infractions, and specifically exempts these infractions from existing provisions that classify violations of Part 85 or its rules as misdemeanor offenses.

The bill sets the maximum civil fine for each violation or attempted violation of Section 8512b or 8512f at \$1,000. However, the maximum fine is set at \$50 per violation or attempted violation, if all of the following apply: the violation or attempted violation is (1) committed on a single-family residential parcel or any other parcel or contiguous parcels with no more than four acres of turf; and (2) by the property's owner or renter, by a family member, or by someone else who lives on the property. A person fined under this civil fine subsection (8520(7)) may not also be assessed an administrative fine under subsection 8520(2).

Attorney General. [§8520] Currently, the Attorney General may bring a civil court action against any person who violates Part 85 or its rules, and the court may assess a civil fine of not more than \$5,000 for each violation or attempted violation. The Attorney General may also bring an action in circuit court to recover the reasonable costs of the investigation. Fines and costs recovered by the Attorney General under these provisions are forwarded to the State Treasurer for deposit into the Fertilizer Control Fund created in Section 8514 (MCL 324.8514).

Under the bill, the Attorney General may bring a civil court action seeking a civil fine to be imposed on a person who violated, or attempted to violate, Part 85 or its rules, except for violations or attempted violations of Section 8512b (improperly applying a phosphorus fertilizer to turf, applying fertilizer too close to surface water, or improperly cleaning a fertilizer spreader ) or Section 8512f (failing to contain a fertilizer released on an impervious surface, or improperly applying a fertilizer to turf on frozen or saturated soil).

Legislative Analyst: Shannan Kane  
Fiscal Analyst: William E. Hamilton

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.