

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-155—sSB 440

Planning and Development Committee

Environment Committee

Finance, Revenue and Bonding Committee

**AN ACT CONCERNING PHOSPHOROUS REDUCTION IN STATE
WATERS**

SUMMARY: This act requires the Department of Energy and Environmental Protection (DEEP) commissioner, or his designee, to work with specified municipalities to develop a state-wide strategy to reduce phosphorus in inland nontidal waters to comply with U.S. Environmental Protection Agency (EPA) standards.

It establishes certain restrictions on using fertilizer, soil amendments, or compost containing phosphate. The act:

1. generally prohibits applying fertilizer, a soil amendment, or compost containing phosphate to an “established lawn;”
2. creates a seasonal moratorium on applying such fertilizer, soil amendment, or compost;
3. generally bans applying it within a certain distance of a water body; and
4. bans applications on an impervious surface.

It exempts from these restrictions (1) applications on agricultural land and golf courses and (2) the use of fertilizer, a soil amendment, or compost containing 0.67% or less phosphate.

The act allows the agriculture commissioner to (1) adopt regulations to implement the act’s fertilizer, soil amendment, and compost-related requirements and (2) approve consumer information on use restrictions and best practices for the general public or posting and distribution at retail points of sale. It requires him to assess a \$500 civil penalty on anyone who violates the act’s fertilizer, soil amendment, or compost restrictions.

The act also expands the water quality projects eligible for Clean Water Fund (CWF) financing to include certain nutrient removal projects, rather than only projects for nitrogen removal.

EFFECTIVE DATE: Upon passage, except the provisions concerning product application are effective January 1, 2013.

STATE WIDE STRATEGY TO REDUCE PHOSPHORUS

The act requires the DEEP commissioner, or his designee, and the chief elected officials, or their designees, of Cheshire, Danbury, Meriden, Southington, Wallingford, Waterbury, and any other impacted municipality to collaboratively evaluate and make recommendations on a statewide strategy to reduce phosphorus

OLR PUBLIC ACT SUMMARY

loading in inland nontidal waters to comply with EPA standards. (The act does not specify how the other municipalities would be identified.)

The strategy must include:

1. a statewide response to address phosphorous nonpoint source pollution;
2. approaches for municipalities to use to comply with EPA standards for phosphorous reduction, including guidance for treatment and potential plant upgrades; and
3. the proper scientific methods for measuring current phosphorous levels in inland nontidal waters and making future projections of phosphorous levels in these waters.

PHOSPHATE FERTILIZER, SOIL AMENDMENT, AND COMPOST APPLICATION

Definitions

By law, “fertilizer” is any substance containing at least one recognized plant nutrient that is used for its plant nutrient content and designed for use or claimed to promote plant growth. It does not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood, ash, or other products the agriculture commissioner exempts (CGS § 22-111b).

A “soil amendment” is any substance intended to improve the physical or chemical characteristics of soil, but not commercial fertilizers, agricultural liming materials, unmanipulated animal and vegetable manures, compost, pesticides, or other materials the agriculture commissioner exempts (CGS § 22-111aa).

General Prohibition

The act bans applying fertilizer, a soil amendment, or compost containing phosphate to an established lawn unless:

1. a soil test using agriculture commissioner-approved methods performed within the previous two years before application shows the soil lacks phosphorus, and the fertilizer, soil amendment, or compost is necessary for lawn growth or
2. it is used to establish new grass or repair a lawn with seed or sod.

Under the act, an “established lawn” is an area covered with a grass species for at least two growing seasons and customarily kept mowed.

Seasonal Restriction

The act prohibits anyone from applying fertilizer, a soil amendment, or compost containing phosphate to a lawn from December 1 to March 15 of the next year.

Buffer Area Restriction

The act generally prohibits applying fertilizer, a soil amendment, or compost containing phosphate to a portion of lawn that is within 20 feet of a brook, stream, river, lake, pond, sound, or other water body. But it allows such application, if

OLR PUBLIC ACT SUMMARY

applied by a drop spreader, rotary spreader with a deflector, or targeted spray liquid at least 15 feet from a water body.

Impervious Surface Restriction

The act prohibits the application of fertilizer, a soil amendment, or compost containing phosphate to an impervious surface. Under the act, an “impervious surface” is any structure, surface, or improvement that reduces or prevents stormwater absorption into land, such as porous paving, paver blocks, gravel, crushed stone, decks, patios, and elevated structures.

NUTRIENT REMOVAL PROJECT FUNDING

The act expands the types of water quality projects eligible for CWF financing to include projects for nutrient removal, instead of only nitrogen removal projects. The expansion is effective upon passage but applies to certain projects on and after July 1, 2012.

Under the act, a construction contract awarded by a municipality on or after July 1, 2012 that is eligible for CWF financing as a nutrient removal project must receive (1) a project grant of 30% of the project’s cost associated with nutrient removal, (2) a 20% grant for project costs unrelated to nutrient removal, and (3) a loan for the rest. This is the same allocation formula available for nitrogen removal projects under prior law. Nutrient removal projects under design or construction on July 1, 2012 and constructed projects without permanent Clean Water funding on July 1, 2012 are eligible for funding as specified above. These funds cannot exceed 100% of the eligible water quality project cost.

If additional federal grant funds are available for Long Island Sound clean-up projects funded on or after July 1, 2012, a distressed municipality can receive (1) state and federal grants of up to 50% of nutrient removal project costs, (2) a 20% grant for project costs unrelated to nutrient removal, and (3) a loan for the remainder. The funds cannot exceed 100% of the allowable water quality project cost.

BACKGROUND

Agricultural Land

By law, “agricultural land” means any land in the state which, based on soil types, existing and past use for agricultural purposes, and other relevant factors, is suitable for (1) cultivating plants for producing human food and fiber and other useful and valuable plant products; (2) producing animals, livestock, and poultry useful to people and the environment; and (3) providing economically profitable farm units. It may include adjacent pastures, wooded land, natural drainage areas, and other adjacent open areas (CGS § 22-26bb).

Clean Water Fund

The state’s CWF provides financial aid to municipalities through grants and loans for the planning, design, and construction of wastewater treatment facilities.

OLR PUBLIC ACT SUMMARY

It is financed through a combination of federal and state funding.

Eligible Water Quality Project

By law, an “eligible water quality project” means the planning, design, development, construction, repair, extension, improvement, remodeling, alteration, rehabilitation, reconstruction, or acquisition of a water pollution control facility that the DEEP commissioner approves (CGS § 22a-475).

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