

HOUSE BILL REPORT

SSB 5849

As Passed House - Amended
April 12, 1993

Title: An act relating to the regulation of dairy animal feeding operations.

Brief Description: Revising dairy management.

Sponsors: Senate Committee on Agriculture (originally sponsored by Senators M. Rasmussen, Erwin, McAuliffe, Roach, Anderson, Bauer, Barr, Amondson and Loveland).

Brief History:

Reported by House Committee on:
Agriculture & Rural Development, March 25, 1993, DPA;
Passed House - Amended, April 12, 1993, 92-0.

HOUSE COMMITTEE ON AGRICULTURE & RURAL DEVELOPMENT

Majority Report: Do pass as amended. Signed by 10 members: Representatives Rayburn, Chair; Kremen, Vice Chair; Chandler, Ranking Minority Member; Schoesler, Assistant Ranking Minority Member; Chappell; Foreman; Grant; Karahalios; Lisk; and Roland.

Staff: Kenneth Hirst (786-7105).

Background: A central element of the federal Clean Water Act is a permit system for controlling pollutants from point sources. This permit system is known as the National Pollutant Discharge Elimination System (NPDES).

Certain animal feeding operations are subject to the federal permit system and certain are not. Rules adopted by the United States Environmental Protection Agency for implementing the federal act define an animal feeding operation as being a lot or facility: in which animals are stabled or confined and fed or maintained for 45 or more days during any 12 month period; and in no portion of which are crops, forage vegetation, or post-harvest residues sustained in the normal growing season.

The federal rules declare concentrated animal feeding operations to be point sources subject to the NPDES permit system. The concentrated version of a feeding operation for dairy animals is one: (1) in which 700 mature dairy cattle

are confined; (2) in which 200 mature dairy cattle are confined and either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device, or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; or (3) which is designated as such on a case-by-case basis because it is a significant contributor of pollution to the waters of the United States.

However, no animal feeding operation is a concentrated animal feeding operation if it discharges only in the event of a 25 year, 24 hour storm event.

Discharge permits are issued in this state by the Department of Ecology to implement state and federal law. The department, the state's Conservation Commission, and local conservation districts have established a program under which varying degrees of responsibilities for responding to water pollution complaints involving agricultural activities may be delegated to the districts. Four levels of activities and responsibilities have been established. The districts select their levels of involvement from these four by entering a compliance memorandum of agreement.

Summary of Bill:

NPDES Permits. The director of ecology may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters. In making this decision, the director must consider a number of factors, including: the size of the feeding operation and the amount of wastes reaching waters of the state; the location of the operation relative to such waters; and means of conveying animal wastes and process waters into such waters. A dairy animal feeding operation that is determined to be a significant contributor of pollution, if immediate corrective actions are not possible, must be designated as a concentrated dairy animal feeding operation.

The department must administer and enforce NPDES permits for operators of concentrated dairy animal feeding operations, where required to do so by federal regulations.

A "dairy animal feeding operation" is a lot or facility at which: dairy animals have, are, or will be stabled or confined and fed for a total of 45 days or more in any 12 month period; and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing

season over any portion of the lot or facility. A "concentrated dairy animal feeding operation" is a dairy animal feeding operation which is subject to regulation under the Dairy Waste Management Program because it is designated by the director or because: (1) it has more than 700 mature dairy cows that are confined; or (2) it has more than 200 head of mature dairy cattle that are confined, and either pollutants are discharged from it into navigable waters through a manmade ditch, flushing system, or other similar manmade device, or pollutants are discharged from it directly into surface or ground waters of the state that originate outside of the operation and pass over or through the facility or otherwise come into direct contact with the animals confined in the operation.

A notice of intent to apply for a permit is not required from a concentrated dairy animal feeding operation until the director of ecology has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

Complaints. If the department receives a complaint or believes that a dairy animal feeding operation is a likely source of water quality degradation, the department may investigate the operation. The department must investigate a written complaint within 10 days and must make a written report of its findings. A copy of the findings must be provided upon request to the dairy operation.

The department must cease pursuit of a complaint if it determines that the operator of a dairy animal feeding operation has the means to correct a water quality problem in a manner that will prevent future contamination and does so promptly and the correction is maintained. If the department finds that an unresolved water quality problem from a dairy animal feeding operation requires immediate corrective action, it shall notify the operator and the conservation district in which the problem is located. If the party against whom the complaint is made is known and the local conservation district is operating at levels three and four, that party will be provided the opportunity to work with the district on a voluntary basis.

Duties of the Department. The department must: identify existing or potential water quality problems resulting from dairy farms; review complaints concerning the discharge of pollutants from any dairy farm, regardless of size; determine if a dairy-related water quality problem requires immediate corrective action under the state's water pollution control laws or water quality standards; appoint a compliance review committee that will annually review and update policy and disseminate information; and report to the

Conservation Commission annually regarding its dairy waste pollution enforcement activities. The department may not delegate its enforcement responsibilities.

Duties of Local Districts and the Commission. A local conservation district must: adopt and annually update the water quality section in its dairy waste management plan; include, as part of its annual report, a water quality progress report on dairy waste management activities; and adopt and carry out a compliance level option, contingent upon the availability of funding and resources to implement a dairy waste management program. District responsibilities for each of four compliance levels are specified. These are the four levels of responsibilities currently outlined in compliance memoranda of agreement with the department as they apply to dairy operations, with one exception: a deadline is added by which a district must notify the department regarding an operator's failure to develop or implement a waste management plan.

The state's Conservation Commission must: forward to the department the dairy waste management plan progress reports of the districts; provide assistance and information to the districts; coordinate district programs at the state level; appoint district representatives and a commission representative to serve on the Compliance Review Committee; and provide communication outreach to representatives of agricultural and environmental organizations. These duties are contingent upon the availability of funding and resources to implement a dairy waste management program.

Standards. The department must encourage the use of federal Soil Conservation Service standards and specifications in designing best management practices for dairy waste management plans to protect water quality.

Appeals; Liability. Enforcement actions and administrative orders issued by the department may be appealed to the Pollution Control Hearings Board. One party acting under this program is not liable for another party's actions under this program.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (1) Several years ago, reaction to water quality enforcement actions taken against a chicken farm resulted in the development of compliance memoranda of agreement which involve local conservation districts in investigations of water quality complaints involving

agricultural operations. This bill codifies these arrangements with regard to dairy operations. (2) The bill will provide a stable program within which dairy farmers can make informed business decisions. (3) The bill gives a farmer the opportunity to comply with water quality requirements before a permit is required. (4) The bill represents a compromise which provides the Soil Conservation Service, conservation districts, and the department, a role in dairy waste management and at the same time permits the department to satisfy federal requirements.

Testimony Against: None.

Witnesses: (In favor) Senator Marilyn Rasmussen; Mike Llewelyn, Department of Ecology; Dan Coyne, Washington State Dairy Federation; Linda Arcuri, Washington Association of Conservation Districts; and Jean Leonard, Washington Association of Conservation Districts.