

HOUSE BILL REPORT

HB 1299

As Reported by House Committee On:
Environment

Title: An act relating to including certain cattle feedlots within the statutory exemption for odor or fugitive dust caused by agricultural activity.

Brief Description: Including cattle feedlots implementing best management practices within the statutory exemption for odor or fugitive dust caused by agricultural activity.

Sponsors: Representatives Blake, Manweller, Pettigrew, Dent, Robinson, Chapman, Buys, Kretz, Haler and Irwin.

Brief History:

Committee Activity:

Environment: 1/23/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Includes cattle feedlots implementing specified best management practices pursuant to the feedlot's fugitive dust control plan within the agricultural activities that are exempt under the Washington Clean Air Act from certain fugitive dust regulations.
- Limits the scope of the agricultural activities exemption, as may be required in certain instances in order to comply with certain Clean Air Act requirements.
- Specifies that any notice of violation issued by the Department of Ecology related to odors or fugitive dust caused by agricultural activities must include either a detailed statement with evidence as to why the activity is not consistent with good agricultural practices, or a detailed statement with evidence that the odors or fugitive dust have a substantial adverse effect on public health.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Taylor,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys, Dye, Fey, Kagi and McBride.

Staff: Robert Hatfield (786-7117).

Background:

The Washington Clean Air Act.

The Washington Clean Air Act sets up a regulatory scheme to protect air quality in Washington State. Under the state Clean Air Act, all sources and emissions units are required to meet emission standards established by the Department of Ecology (Ecology). Enforcement authority for the state Clean Air Act is handled either by Ecology or by one of the seven clean air agencies within Washington, depending on the county where the source is located. Civil penalties of up to \$10,000 per violation are authorized by the state Clean Air Act.

Odors and fugitive dust are two types of emissions regulated under the state Clean Air Act's general standards for maximum emissions. The standards require sources of fugitive emissions to implement "reasonable precautions" to prevent fugitive air emissions from being released and to prevent fugitive dust from becoming airborne. Sources of odors that may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce those odors to a reasonable minimum.

Fugitive Dust Control Guidelines.

In 1995 Ecology issued a series of guidelines known as Fugitive Dust Control Guidelines (Guidelines) for Beef Cattle Feedlots and Best Management Practices. The Guidelines identify best management practices (BMPs) for complying with the reasonable precautions standard for controlling dust at feedlots. Under the Guidelines, each feedlot develops its own fugitive dust control plan and implements its plan according to the criteria and/or implementation schedules outlined in their plans.

Agricultural Activity Exemption to the Washington Clean Air Act.

There is an exemption to the requirements of the state Clean Air Act for agricultural activities that cause odors or fugitive dust, so long as the activities are consistent with good agricultural practices, and unless they have a substantial adverse effect on public health. The state Clean Air Act defines agricultural activity to include the raising of livestock. The agricultural activity exemption for fugitive dust does not apply to certain sources, including to cattle feedlots that have an inventory of 1,000 or more cattle in operation between June 1 and October 1.

Summary of Substitute Bill:

The agricultural activity exemption for fugitive dust under the state Clean Air Act for fugitive dust applies to cattle feedlots implementing BMPs pursuant to the feedlot's fugitive dust control plan.

The definition of "agricultural activity" is expanded to include the growing, raising, or production of cattle at cattle feedlots.

The definition of "good agricultural practices" is included to include cattle feedlots implementing best management practices pursuant to a fugitive dust control plan that conforms to fugitive dust control guidelines approved by Ecology in 1995, as well as any subsequent updates to those guidelines that are mutually agreed by the Ecology and the Washington Cattle Feeders Association on behalf of cattle feedlots.

Substitute Bill Compared to Original Bill:

A requirement is added regarding the level of detail that must be included in any notice of violation issued by Ecology. The definition of "good agricultural practices" is modified to include specified authorities on which best implementation practices must be based. The agricultural activities exemption is modified to include additional control measures as may be required in order to comply with the state Clean Air Act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2017.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Cattle feeders have worked very closely with Ecology since 1995 to be good stewards and good neighbors. Best management practices include scraping pens, watering alleys, wet manure spraying, fixed water application, mobile water application, increased animal densities using eliminations to prevent dust, surface amendments of various kinds to help bind the dust, and windbreaks to reduce the wind. The benefit of this bill ensures that there will continue to be good working relationships with Ecology and cattle feeders. One member of the beef industry is the largest employer in Yakima County, with more than 900 employees in the Toppenish area. Cattle feedlots currently do not have the benefit of the agricultural activity exemption. Farming operations are subject to the operation, but feeders are not. Feedlots should be in the same exemption category. This bill would not modify feedlots' responsibility. Ecology has abandoned a cooperative approach, and has adopted a no-tolerance interpretation as it relates to dust. The legislative intent of the state Clean Air Act said that agriculture is essential. Ecology's no-tolerance standard has no basis in practice. This bill would allow regulators to focus on meaningful dust issues, rather than on small amounts of dust that have no impact.

Controlling dust is the good-neighbor thing to do. Some of the BMPs that Ecology is talking about are large capital projects that are not viable for small feeder operations. Dust is a big contributor to disease in cows, so the cattle industry has a great incentive to control dust. There needs to be a predictable business climate in order to keep business in the state. This bill is about the cost of food. Any costs on feeding partners puts pressure on price. This bill represents a middle approach. Existing law exempts most agricultural activities from fugitive dust regulations. Ecology has changed the way it interprets its state Clean Air Act regulation. This bill would make it so that these facilities are treated like the rest of agriculture.

(Opposed) Cattle feedlots represent a significant health concern. Dust is not a benign substance, and dust from cattle feedlots carries things like hydrogen sulfide and ammonia that are problematic for people with compromised immune systems. One hundred tons of fine particulates per year can be emitted from a 10,000 head facility. It is unclear under the bill what is meant to be covered. It would create uncertainty over which regulations apply. The bill does not define "BMPs" or fugitive dust guidelines. It would also be subject to an Environmental Protection Agency determination that it is consistent with federal law, which might not happen.

Persons Testifying: (In support) Representative Blake, prime sponsor; Ed Field and Jack Field, Washington Cattle Feeders; Jayne Davis, Agribeeff; Will Derting, Post 5 Cattle and Washington Cattle Feeders Association; Bill Easterday, Easterday Ranchers; Nicole Derting, Post 5 Cattle; Evan Sheffels, Washington Farm Bureau and Washington Cattlemen Association; Rob Miller, Washington Cattle Feeders Association and AgriBeef; and Svend Brandt-Erichsen, Nossaman LLP.

(Opposed) Stu Clark, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.