

HOUSE BILL REPORT

HB 1135

As Reported by House Committee On:
Ecology & Parks
General Government Appropriations

Title: An act relating to exempting agricultural anaerobic digesters from solid waste handling permitting.

Brief Description: Exempting agricultural anaerobic digesters from solid waste handling permitting.

Sponsors: Representatives McCoy, Chase, Kenney, Hinkle and Nelson.

Brief History:

Committee Activity:

Ecology & Parks: 1/20/09, 2/13/09 [DPS];

General Government Appropriations: 2/25/09 [DPS(EPAR)].

Brief Summary of Substitute Bill

- Exempts anaerobic digesters from solid waste permitting if the anaerobic digester meets certain requirements.
- Requires the Department of Ecology and the Washington State Department of Agriculture, in consultation with the Department of Health, to issue guidelines for anaerobic codigestion of livestock manure and organic waste-derived material.

HOUSE COMMITTEE ON ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Uptegrove, Chair; Rolfes, Vice Chair; Short, Ranking Minority Member; Chase, Dickerson, Dunshee, Eddy, Finn, Hudgins, Kretz, Kristiansen, Morris and Shea.

Minority Report: Do not pass. Signed by 1 member: Representative Orcutt.

Staff: Jaelyn Ford (786-7339)

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.

Background:

Solid Waste Permits.

Most facilities that handle solid waste must maintain a solid waste handling permit from the jurisdictional health department which can issue a permit only after consulting with the Department of Ecology (DOE). Some solid waste handling facilities are exempt from this requirement. These include facilities that present little or no environmental risk, or that satisfy environmental performance requirements established for similar facilities. Similarly, a local health department may defer permitting requirements for certain facilities that have obtained other permits that regulate air, water, or the environment.

Anaerobic Digestion.

Anaerobic digestion is a series of processes in which microorganisms break down biodegradable material in the absence of oxygen. It is particularly suited to wet organic material and is commonly used for effluent and sewage treatment. A codigestion or cofermentation plant is typically an agricultural anaerobic digester that accepts two or more input materials for simultaneous digestion.

Anaerobic digestion facilities produce biogas. The methane in biogas can then be burned to produce both heat and electricity. Excess electricity can be sold to suppliers or put into the local grid.

Digestate is composed of the remnants of the original material put into the digesters that the microbes cannot use. Digestate can come in three forms: fibrous, liquor, or a sludge-based combination of the two. Digestate liquor may be used as a soil fertilizer.

Summary of Substitute Bill:

Anaerobic digesters are exempted from solid waste permitting requirements, provided that the digesters comply with specified conditions.

By August 1, 2009 the DOE and the Washington State Department of Agriculture (WSDA), in consultation with the Department of Health, must issue guidelines for anaerobic codigestion of livestock manure and organic waste-derived material, explaining the steps necessary for a digester owner or operator to meet conditions for the exemption.

Those conditions are:

- Digesters must process at least 50 percent livestock manure by volume.
- Digesters may process no more than 30 percent imported organic waste-derived material by volume. Any imported organic waste-derived material must be preconsumer in nature and, if likely to contain animal by-products, be source-separated at a facility licensed to process food by the U.S. Department of Agriculture (USDA), the U.S. Food and Drug Administration (FDA), the WSDA, or another applicable regulatory agency. Any imported bovine processing waste must be from animals approved by the USDA inspectors and cannot contain risk material. Sheep carcasses or sheep processing waste can not be fed into the digester. Imported

organic waste-derived material must be fed into the digester within 36 hours of receipt.

- Digester owners or operators must handle imported organic waste-derived materials to protect surface water and groundwater. Storage and handling of imported organic waste-derived materials must comply with best farm management practices. Structures used to receive or store organic waste-derived materials must either: (1) comply with a Natural Resources Conservation Service (NRCS) standard or, if constructed under previous versions of that standard, be certified to be effective by the NRCS; or (2) meet the construction industry standard of the American Concrete Institute or the American Institute of Steel Construction. Digester owners or operators must control nuisance odors and manage operations to minimize attraction of flies, rodents, and other vectors.
- Digestate from digesters must be managed in accordance with a dairy nutrient management plan or meet quality standards for pathogens, nutrient testing, and metals before it is distributed for off-farm use or sent to an off-site permitted compost facility for further treatment to meet compost quality standards.
- Digester owners or operators must allow inspection by the DOE or the jurisdictional health department at reasonable times to verify compliance.
- Digester owners or operators must notify the DOE or the jurisdictional health department at least 30 days prior to operating the digester under the conditions for the exemption.
- The digester owner or operator must submit an annual report quantifying and characterizing nonmanure waste received and including test data if compliance testing was required.
- Digestate from a digester operated in compliance with the conditions is not subject to solid waste permitting requirements.

A digester that is not operated in compliance with the conditions may be subject to solid waste permitting requirements, and violations of conditions are subject to \$1,000 per day penalty provisions applying to violations of other, existing exemptions to solid waste permitting requirements. The DOE is authorized to issue an appropriate order to a person violating a condition of this exemption and other existing exemptions to solid waste permitting requirements to ensure compliance with exemption conditions. Orders may be appealed to the Pollution Control Hearings Board under established procedures.

Substitute Bill Compared to Original Bill:

The substitute bill replaces the criteria that exempt an anaerobic digester from needing a solid waste permit. The criteria in the original bill included: (1) the anaerobic digester processes primarily livestock manure; (2) the anaerobic digester also processes organic waste-derived materials; (3) the anaerobic digester is constructed and operated in accordance with the National Resources Conservation Service standards; (4) all liquid and solid digestate is handled as a dairy nutrient or is tested to not demonstrate a risk to public health; and (5) the operator submits an annual report to the local health department that quantifies and characterizes the non-manure waste received.

The new provisions of the substitute bill require:

- digesters process at least 50 percent livestock manure by volume;

- digesters process no more than 30 percent imported organic waste-derived material by volume. Any imported organic waste-derived material must be preconsumer in nature and, if likely to contain animal by-products, be source-separated at a facility licensed to process food by the USDA, the FDA, the WSDA, or another applicable regulatory agency. Any imported bovine processing waste must be from animals approved by the USDA inspectors and cannot contain risk material. Sheep carcasses or sheep processing waste cannot be fed into the digester. Imported organic waste-derived material must be fed into the digester within 36 hours of receipt;
- digester owners or operators handle imported organic waste-derived materials to protect surface water and groundwater;
- storage and handling of imported organic waste-derived materials comply with best farm management practices;
- structures used to receive or store organic waste-derived materials either: (1) comply with an NRCS standard or, if constructed under previous versions of that standard, be certified to be effective by the NRCS; or (2) meet the construction industry standard of the American Concrete Institute or the American Institute of Steel Construction;
- digester owners or operators control nuisance odors and manage operations to minimize attraction of flies, rodents, and other vectors;
- digestate from digesters be managed in accordance with a dairy nutrient management plan or meet quality standards for pathogens, nutrient testing, and metals before it is distributed for off-farm use or sent to an off-site permitted compost facility for further treatment to meet compost quality standards;
- digester owners or operators allow inspection by the DOE or the jurisdictional health department at reasonable times to verify compliance;
- digester owners or operators notify the DOE or the jurisdictional health department at least 30 days prior to operating the digester under the conditions for the exemption; and
- the digester owner or operator submit an annual report quantifying and characterizing nonmanure waste received and including test data if compliance testing was required.

In the substitute bill, digestate from a digester operated in compliance with the conditions is not be subject to solid waste permitting requirements.

In the substitute bill, a digester that is not operated in compliance with the conditions may be subject to solid waste permitting requirements, and violations of conditions are subject to \$1,000 per day penalty provisions applying to violations of other existing exemptions to solid waste permitting requirements. The DOE is authorized to issue an appropriate order to a person violating a condition of this exemption and other existing exemptions to solid waste permitting requirements to ensure compliance with exemption conditions. Orders may be appealed to the Pollution Control Hearings Board under established procedures.

Appropriation: None.

Fiscal Note: Available.

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) The permitting process is quite complicated and needs some help. The permits should be streamlined, as five different permits are required from five different agencies. The technology is simple, it is great for the environment, and it produces alternative energy. The digester does replace some of the smells associated with dairy farms. Codigestion makes the manure produce more energy. Adding a solid waste permit would add more time, money, and energy to the processes of building and keeping digesters permitted. Washington State University has done a lot of research that is quite positive. The food waste would normally go to a landfill. The permitting process should keep paperwork to a minimum in order to make digesters practical. Dairy digesters are a good thing and benefit the state. The costs should be kept down in order to make digesters economical.

(With concerns) Anaerobic digesting is necessary, desirable, and abates greenhouse gases, but should not be allowed to digest large amounts of nitrogen. Nitrogen will produce ammonia, and then the ammonia will go into the atmosphere, creating more greenhouse gases and serious health and environmental repercussions. Dairy nutrient plans are not effective in controlling ammonia. Anaerobic digesters should have to meet the same legal requirements as all other handlers of solid waste. Digesters should have a solid waste handling permit in order to protect the facility from vermin, disease, and ground water problems.

(Opposed) We need to keep a level playing field with those handling solid waste. The bill is early; there is a group working on this, and they should be allowed to continue to work on these issues to find solutions. There needs to be more specificity in the parameters of the exemption.

Persons Testifying: (In support) Representative McCoy, prime sponsor; Andy Werkhoven; Darryl Vander Haak; Daryl Williams, Tulalip Tribes; and Kevin Maas, Farm Power Nutrient.

(With concerns) Laurie Davies, Department of Ecology.

(Opposed) Dennis Burke; Vicki Austin, Washington Refuse and Recycling Association; Jody Snyder, Land Recovery Inc.; and Jerry Smedes, Cedar Grove Composting.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The substitute bill by Committee on Ecology & Parks be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 1 member: Representative Armstrong.

Staff: Owen Rowe (786-7391)

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Ecology & Parks:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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) The permitting process for anaerobic digesters based on what substrate may be used, can require up to five permits from five different agencies. This bill streamlines the permitting process for digesters. Anaerobic digesters are good for the environment; they keep nutrients out of water and provide power back to the grid. This bill will make it easier for anaerobic digesters to be built.

(Opposed) None.

Persons Testifying: Representative McCoy, prime sponsor; and Chris Cheney, Washington Dairy Federation.

Persons Signed In To Testify But Not Testifying: None.