

SENATE BILL REPORT

SB 5196

As Reported by Senate Committee On:
Agriculture, Water, Trade & Economic Development, February 16, 2017

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: Senators Warnick, Hobbs, Takko, King, Chase and Honeyford.

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 1/26/17, 2/16/17 [DPS, DNP].

Brief Summary of Substitute Bill

- Requires any notice of violation pertaining to odors or fugitive dust caused by agricultural activity include a detailed statement with evidence.
- Establishes that the exemption for fugitive dust applies to cattle feedlots except under certain circumstances.
- Defines good agricultural practices for cattle feedlots to mean implementing best management practices pursuant to a fugitive dust control plan that meets certain guidelines.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5196 be substituted therefor, and the substitute bill do pass.

Signed by Senators Warnick, Chair; Hawkins, Vice Chair; Wellman, Assistant Ranking Minority Member; Brown, Honeyford, Pearson, Short, Takko and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Chase, Ranking Minority Member; McCoy.

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.

Staff: Karen Epps (786-7424)

Background: Clean Air Act Requirements. The Department of Ecology (Ecology) and seven local air pollution control authorities (local air authorities) have each received approval from the United States Environmental Protection Agency to administer aspects of the federal Clean Air Act in Washington. Local clean air agencies have the primary responsibility for administering the state and federal Clean Air acts in counties which have elected to activate a local air authority or to form a multicounty air authority. In other areas of the state, Ecology is responsible for administering state and federal Clean Air Act programs. Under the federal Clean Air Act, each state maintains a State Implementation Plan that describes how the state implements clean air programs to achieve the federal ambient air quality standards for air pollutants.

Under the Washington Clean Air Act (Act), Ecology sets Washington Ambient Air Quality Standards (WAAQS). Local air authorities may also adopt standards that apply within their jurisdiction which must be at least as protective as federal standards. The Act directs Ecology or the local air pollution control authorities to require permits for certain operating sources of air pollutants and allows the state and these local agencies to impose registration requirements on sources of other air pollutants.

The Act exempts odors caused by agricultural activities consistent with good agricultural practices on agricultural land unless the odors have a substantial adverse effect on public health. Agricultural activity is defined for these purposes as the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products. Before issuing a notice of violation under the air pollution control statutes for an agricultural activity, Ecology or local air pollution control authority is required to consult with a recognized third-party expert in the activity to determine whether the activity is consistent with good agricultural practices.

Fugitive dust caused by agricultural activity on agricultural land that is consistent with good agricultural practices is exempted from the Act standards. Fugitive dust is defined as particulate emission made airborne by human activity, forces of wind, or both, which does not pass through a stack, chimney, vent, or similar opening. The fugitive dust exemption does not apply to facilities subject to the Act's registration requirements as specified in current administrative rules and to specified statutory permit requirements and new source requirements.

Summary of Bill (First Substitute): Any notice of violation pertaining to odors or fugitive dust caused by agricultural activity must include a detailed statement with evidence as to why the activity is inconsistent with good agricultural practices, or has a substantial adverse effect on public health. The exemption for odors or fugitive dust caused by agricultural activity consistent with good agricultural practices applies to cattle feedlots with operational facilities which have an inventory of 1,000 or more cattle in operation between June 1st and October 1st, where vegetation forage growth is not sustained over the majority of the lot. These cattle feedlots must comply with current requirements included in the State Implementation Plan, and if an area in which a cattle feedlot is located is at any time in the future designated nonattainment for a national ambient air quality standards, additional control measures may be required for cattle feedlots.

Agricultural activity includes the growing, raising, or production of cattle at cattle feedlots. Good agricultural practices for cattle feedlots means implementing best management practices pursuant to a fugitive dust control plan that conforms to the fugitive dust control guidelines that were approved by Ecology in December 1995 or in updates to those guidelines that are mutually agreed to by Ecology and the Washington Cattle Feeders Association.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT COMMITTEE (First Substitute):

- Requires any notice of violation pertaining to odors or fugitive dust caused by agricultural activity include a detailed statement with evidence as to why the activity is inconsistent with good agricultural practices, or has a substantial adverse effect on public health.
- Establishes that the definition of agricultural activity includes the growing, raising, or production of cattle at cattle feedlots.
- Provides that good agricultural practices for cattle feedlots means implementing best management practices pursuant to a fugitive dust control plan that conforms to the fugitive dust control guidelines that were approved by Ecology in December 1995 or in updates to those guidelines that are mutually agreed to by Ecology and by the Washington cattle feeders association on behalf of cattle feedlots.
- Establishes that the exemption for fugitive dust applies to cattle feedlots - except that the cattle feedlots must comply with current requirements included in the State Implementation Plan, and if an area in which a cattle feedlot is located is at any time in the future designated nonattainment for a national ambient air quality standards, additional requirements may be required for cattle feedlots.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Currently cattle feedlots are not exempt in the same way as other agricultural activities are under the Clean Air Act. Eastern Washington is dusty and neighbors are aware when cattle is being moved from one pen to another, but dust does not stay. It makes sense to include cattle feedlots in the same way as other agricultural producers. Fugitive dust control guidelines were approved and agreed to by both the feeders and Ecology in 1995. These guidelines are still in place and clarify what constitutes what reasonable precautions a feedlot must do to minimize emissions of fugitive dust. The primary mechanism is to identify best management practices for fugitive dust control and develop flexible, site-specific fugitive dust control plans.

This bill would exempt cattle feedlots from the fugitive dust control regulatory requirements under the Clean Air Act if a facility has an approved dust control plan in place and is implementing best management practices. Some of standards that Ecology is asking feedlots to meet are identical to those standards that could be measured at a smokestack. A tractor working ground on the agricultural side of a farm can make dust but if the feed truck drives by the tractor and makes dust, the feedlot is in violation. There has been frustration with how Ecology's Spokane office has been applying these rules to the cattle feeders. The interpretation of these rules threatens a \$3.6 billion industry in Washington without any corresponding benefit to the environment and without any means for cattle feeders to ensure compliance with the interpretation of these rules. Currently, state law exempts virtually all other agricultural activity from a no tolerance dust standard if the activity is conducted consistently with good agricultural practices and provided the activity does not have a substantial affect on public health. This bill is important because cattle feeders are part of agriculture and should be able to operate under the same rules, while still doing best management plans and fugitive dust control plans.

CON: This bill will restrict Ecology's ability and authority to address real public health concerns from cattle feeding operations. This bill will also impact Ecology's ability to maintain compliance with federal law. There are significant concerns with and exposure to emissions from cattle feedlots. Ecology's estimates for emissions from a 10,000 head feedlot is approximately 100 tons of fine particulate emissions per year. The proposed legislation could cause confusion and is unclear; the terms cattle feedlot, best management practices, and fugitive dust control plan are not defined. Adoption of this bill would require justification to EPA and EPA's approval to make the change. This justification may not be feasible based on the large emissions from these feedlot operations.

Persons Testifying: PRO: Senator Judy Warnick, Prime Sponsor; Jack Field, WA Cattle Feeders Assoc.; Ed Field, WA Cattle Feeders Assoc.; Rob Miller, AgriBeef Co., President, WCFA; Bill Easterday, Easterday Ranches; Camas Uebelacker, C & G Cattle Co.; Michael Para, Para Livestock; Jayne Davis, AgriBeef Co.; Evan Sheffels, WA Cattlemen's Assoc., WA Farm Bureau.

CON: Stu Clark, Ecology.

Persons Signed In To Testify But Not Testifying: No one.