

# SENATE BILL REPORT

## SB 5797

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As of February 12, 2009

**Title:** An act relating to exemptions from solid waste handling permit requirements.

**Brief Description:** Regarding exemptions from solid waste handling permit requirements.

**Sponsors:** Senators Haugen, Ranker, Brandland and Hatfield.

**Brief History:**

**Committee Activity:** Agriculture & Rural Economic Development: 2/03/09.

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### SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

**Staff:** Sam Thompson (786-7413)

**Background:** Anaerobic digesters are structures designed to compost (or "digest") livestock manure and other organic waste while limiting access to oxygen, creating methane and other gases that are then burned as fuel to generate electricity. Three anaerobic digesters currently operate in Snohomish, Whatcom, and Yakima counties; a fourth is currently under construction in Skagit County.

Use of organic solid waste (including food processing waste) as feedstock in anaerobic digesters has raised issues regarding applicability of the state Solid Waste Management Act, which includes several permitting requirements for handling and disposal of solid waste.

**Summary of Bill:** An exemption from solid waste permitting requirements for anaerobic digesters is authorized, provided that digesters comply with specified conditions. By August 1, 2009, the Department of Ecology (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. The conditions are as follows:

- 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. "Imported" means originating off of the farm or other site where the digester is operated. "Organic waste-derived material" is grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood

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waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting, but doesn't include biosolids or materials collected in municipal commercial and residential solid waste collection programs.

- 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, WSDA, or other applicable regulatory agency. Any imported bovine processing waste must be from animals approved by USDA inspectors and can't contain risk material. Sheep processing waste can't be fed into the digester. Imported organic waste-derived material must be fed into the digester within 36 hours of receipt.
- Digesters must be designed, constructed, and operated under a USDA Natural Resources Conservation Service (NRCS) standard.
- 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 comply with an NRCS standard or, if constructed under previous versions of that standard, be certified to be effective by the NRCS. 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 under a certified dairy nutrient management plan (any digestate so managed is no longer considered a solid waste) or meet quality standards for pathogens, nutrient testing, and metals before it is distributed for off-farm use or be sent to an off-site permitted compost facility for further treatment to meet compost quality standards.
- Digester owners or operators must allow inspection by DOE or the jurisdictional health department at reasonable times to verify compliance.
- Digester owners or operators must notify 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 isn't subject to solid waste permitting requirements.
- A digester that isn't 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.

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.

**EFFECT OF CHANGES MADE BY AGRICULTURE & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Proposed First Substitute):** Changes: (1) reorder

sections and subsections and clarify language; (2) provide that digestate must be managed under a dairy nutrient management plan specifically addressing digestate, meet compost quality standards, or be managed in alternate manner approved by DOE; (3) clarify that digestate managed under a dairy nutrient management plan specifically addressing digestate is no longer considered a solid waste; (4) provide that imported organic waste-derived material must be received or stored in structure meeting an NRCS standard, be approved by an NRCS representative, or meet certain construction industry standards; and (5) add definitions of "best management practices" and "digestate."

**Appropriation:** None.

**Fiscal Note:** Requested on February 2, 2009.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This measure promotes an innovative source of renewable energy. Conditions imposed on digester operations, which were negotiated with regulatory agencies, are workable. Concerns regarding emissions are already addressed in air quality permits. While the bill is laudable, it needs clarification, including revision of the definition of "organic waste-derived material" to ensure adequate environmental protection.

CON: Limits on manure and waste feedstock should be based on mass rather than volume. Ammonia and other emissions of concern are not adequately addressed in current language.

OTHER: Carbon benefits provided by digesters are important. While the bill language is somewhat complex, guidelines that will be provided by the agencies will be clear and easy to read. Provisions providing for appeals of penalties to the Pollution Control Hearings Board benefit operators because such appeals are less costly and burdensome than judicial appeals.

**Persons Testifying:** PRO: John Sayre, Andy Werhoven, Qualco Energy; Jay Gordon, Washington State Dairy Federation; Kevin Maas, Farm Power; Vicki Austin, Washington Refuse & Recycling Association; Jerry Smedes, Cedar Grove Composting.

CON: Dennis Burke, E<sup>3</sup>.

OTHER: Jeff Canaan, Department of Agriculture; Laurie Davies, Department of Ecology.