

SENATE BILL REPORT

SB 5245

As Reported by Senate Committee On:
Environment, Energy & Technology, February 10, 2023

Title: An act relating to biosolids.

Brief Description: Concerning biosolids.

Sponsors: Senators Wilson, J., Holy, Muzzall and Schoesler.

Brief History:

Committee Activity: Environment, Energy & Technology: 2/03/23, 2/10/23 [DPS].

Brief Summary of First Substitute Bill

- Directs the Department of Ecology to establish pollutant limits for perfluoroalkyl and polyfluoroalkyl chemicals in biosolids, based on state specific data gathered through the study of biosolids in Washington State, by December 30, 2026.
- Establishes documentation, mapping, and notice requirements for transportation and land application of bulk biosolids.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5245 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

Staff: Gregory Vogel (786-7413)

Background: Biosolids. Biosolids are nutrient-rich organic materials resulting from processing domestic sewage in a treatment facility. When treated and processed, these

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residuals can be recycled and applied as fertilizer to improve and maintain productive soils and stimulate plant growth.

Under federal law, there are different rules for different classes of biosolids. Class A biosolids contain no detectable levels of pathogens. When used in bulk, Class A biosolids are subject to buffer requirements, but not to crop-harvesting restrictions.

The Department of Ecology (Ecology) implements the state's Biosolid Management Program. The rules for the program address how and when biosolids can be applied to land as a fertilizer. These rules also deal with matters such as total pollution concentration limits, pathogen reduction rates, and vector attraction reduction requirements.

Perfluoroalkyl and Polyfluoroalkyl Chemicals. Perfluoroalkyl and polyfluoroalkyl (PFAS) chemicals are characterized by their resistance to oil, stains, grease, and water, as well as their durability, heat resistance, and anti-corrosive properties. Ecology has identified PFAS chemicals as persistent, bioaccumulative, and toxic. They are added to carpets, cookware, food packaging, clothing, cosmetics, and other common consumer products. PFAS chemicals have many industrial applications and are used to make certain types of firefighting foams.

Washington State has enacted laws and adopted regulations relating to PFAS levels in drinking water, firefighting foam and equipment, food packaging, and consumer products.

In 2021, the United States Environmental Protection Agency (EPA) announced the agency's PFAS Strategic Roadmap, laying out the agency's approach to addressing PFAS chemicals. The roadmap sets timelines by which EPA plans to take specific actions and commits to new policies to safeguard public health, protect the environment, and hold polluters accountable. As part of the roadmap work, EPA is conducting a biosolids risk assessment for two PFAS compounds, perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), in biosolids. EPA plans to complete the risk assessment for PFOA and PFOS by December 2024.

Summary of Bill (First Substitute): Ecology must adopt rules to require written notice be provided to residents of properties adjacent to a land application site before land application of bulk biosolids may be approved.

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container holding less than one metric ton for application to land. Bulk biosolids do not include second generation biosolids products covered under section 4.6.1 of the Washington State general permit for biosolids management and biosolids sold or given away for residential or garden use.

The state Biosolid Management Program must require a transporter of bulk biosolids to carry a manifest or similar document specifying that the transporter is transporting biosolids

regulated under the state program.

By December 30, 2026, Ecology must establish pollutant limits for PFAS chemicals in biosolids, based on state specific data gathered through the study of biosolids in Washington State. Ecology must consider the results of EPA's risk assessment for PFAS chemicals in biosolids, if available, and other accredited risk assessment tools when setting a PFAS standard.

If Ecology is unable, with reasonable diligence, to complete the rule making by December 30, 2026, for the establishment of PFAS pollutant limits, Ecology may issue a general order to biosolids facilities within the state requiring compliance with any initial PFAS limits determined by it until a rule permanently establishing such limits is in effect.

Land application of biosolids that do not comply with a PFAS chemical pollutant limit is prohibited.

Ecology must publish and maintain a publicly accessible online map or list of the location of parcels where bulk biosolids have been approved for land application.

Before adopting or amending any rules relating to biosolids limits for PFAS chemicals, Ecology must consult with an advisory committee of experts, interested parties, and other similar stakeholders.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Delays the date by which Ecology must establish pollutant limits for PFAS chemicals in biosolids to December 30, 2026, and requires the limits to be based on state specific data gathered through the study of biosolids in Washington State.
- Directs Ecology to consider the results of EPA's risk assessment, if available, and other accredited risk assessment tools when setting a PFAS standard.
- Authorizes Ecology, if it is not able to complete, with reasonable diligence, the rulemaking establishing the limits by December 30, 2026, to issue a general order to biosolids facilities within the state requiring compliance with any initial PFAS limits determined by Ecology until a permanent rule is in effect.
- Removes provisions directing the program to ensure that biosolids are tested for PFAS chemicals for which a pollutant limit has been established.
- Requires Ecology to adopt rules that require written notice be provided to the residents of properties adjacent to the land application site before land application of bulk biosolids may be approved.
- Specifies that bulk biosolids do not include second generation biosolids products covered under section 4.6.1 of the state general permit and biosolids sold or given away for residential or garden use.

Appropriation: None.

Fiscal Note: Available.

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: It's us, biosolids is the end form of solid material from municipal wastewater we create. We've been using it beneficially for many years. However, in recent years we have learned about forever chemicals that are persistent and in small doses are toxic over a long period of time. The bill gives people a chance to get ready for compliance, to recognize that these are not accepted chemicals in our community. With the chemicals being persistent and forever, this means we are going to have to deal this.

CON: There are three options for biosolids. One option is to incinerate, which is an energy intensive process. Another option is to skip incineration, and send it directly to a landfill, taking up valuable space and creating methane emissions. Third, we can apply it as a beneficial use as fertilizer. We are concerned over PFAS but it's important to note that treatment plants do not produce PFAS. Regulation should focus on the actual sources.

OTHER: Having state established standards addresses the tension between managing potential risk and benefits of the product. We support a regulatory tool to promote public safety and regulation of PFAS. We believe more studying can be done and should be done to better understand the risk of land application of biosolids, especially in drinking water.

Before the science was in, our Legislature deemed it a beneficial resource and mandated that Ecology promote its beneficial use. This was a mistake. The waste industry works hand in glove with the department to dump a toxic product on our food and gardens. It's time to reconsider the designation of biosolids as a beneficial resource. We would like to see this bill expanded to look at more chemicals.

Agencies are working on several measures to address these chemicals. We have concerns about setting a standard prematurely without more state specific data.

We are concerned that the bill creates regulatory burden and costs without commensurate benefit. PFAS is being addressed in many ways at the state level and will effectively address PFAS at the source, which is the products.

Persons Testifying: PRO: Senator Jeff Wilson, Prime Sponsor.

CON: MacLeod Pappidas, NorthWest Biosolids.

OTHER: Scott Hazlegrove, WA Association of Sewer & Water Districts; Morton Alexander; Darlene Schanfald; Laurie Davies, Washington State Department of Ecology; Kyle Dorsey, Coalition for Clean Water; Holly Davies, Washington State Department of Health; Heather Trim, Zero Waste Washington.

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