

105TH CONGRESS
2D SESSION

H. R. 3232

To amend the Federal Water Pollution Control Act to control water pollution from concentrated animal feeding operations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1998

Mr. MILLER of California (for himself, Mr. MARKEY, Mr. PALLONE, Mr. STARK, Mr. FILNER, Mr. HINCHEY, Mr. FALEOMAVAEGA, Ms. FURSE, Mr. GUTIERREZ, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to control water pollution from concentrated animal feeding operations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Farm Sustainability
5 and Animal Feedlot Enforcement Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Discharges and runoff from concentrated
2 animal feeding operations are a major source of
3 water pollution in many watersheds.

4 (2) An outbreak of cryptosporidium in Wiscon-
5 sin, which killed more than 100 people, and out-
6 breaks of *Pfiesteria piscicida* in the coastal waters of
7 North Carolina and Maryland, which killed millions
8 of fish and sickened dozens of people, have been
9 linked to contaminants associated with animal feed-
10 ing operations.

11 (3) Current controls on water pollution from
12 concentrated animal feeding operations are inad-
13 equate to control surface discharges and do not ade-
14 quately protect ground water.

15 (4) Additional controls on all forms of water
16 pollution resulting from concentrated animal feeding
17 operations are needed to protect the public health,
18 water quality, and fisheries of the United States.

19 (5) Alternatives to animal waste containment
20 lagoons exist, and the use of these alternatives would
21 better protect the public health and the waters of
22 the United States from pollution.

23 **SEC. 3. PURPOSES.**

24 The purposes of this Act are to protect the public
25 health, water quality, and fisheries of the United States

1 by establishing appropriate controls on water pollution
2 from concentrated animal feeding operations.

3 **SEC. 4. PERMITS.**

4 Section 402 of the Federal Water Pollution Control
5 Act (33 U.S.C. 1342) is amended by adding at the end
6 the following:

7 “(q) CONCENTRATED ANIMAL FEEDING OPER-
8 ATIONS.—

9 “(1) CONCENTRATED ANIMAL FEEDING OPER-
10 ATION DEFINED.—

11 “(A) IN GENERAL.—In this subsection, the
12 term ‘concentrated animal feeding operation’
13 means any livestock or poultry feeding oper-
14 ation (including a dairy) that—

15 “(i)(I) collects animal waste for dis-
16 posal, storage, treatment, or application
17 with a mechanical or flushing system or by
18 other means;

19 “(II) confines animals for 45 consecu-
20 tive days or more during any 1-year pe-
21 riod; and

22 “(III) has a regulatory threshold ca-
23 pacity; or

1 “(ii) contributes to the degradation of
2 a watershed as a result of a discharge of
3 pollutants.

4 The term includes all structures and land used
5 for the collection, storage, treatment, stock-
6 piling, or application of animal waste from such
7 an operation.

8 “(B) REGULATORY THRESHOLD CAPAC-
9 ITY.—For purposes of subparagraph (A), an
10 operation has a regulatory threshold capacity if
11 the sum of the capacity fractions for each class
12 of animal is at least 1.0.

13 “(C) CAPACITY FRACTION.—For purposes
14 of subparagraph (B), the term ‘capacity frac-
15 tion’ means, with respect to each class of ani-
16 mal, the fraction—

17 “(i) the numerator of which is the ca-
18 pacity of the operation for such class of
19 animal, and

20 “(ii) the denominator of which is the
21 specified capacity for such class of animal.

22 “(D) CLASSES OF ANIMAL; SPECIFIED CA-
23 PACITIES.—The classes of animals and the
24 specified capacity for each such class shall be
25 determined in accordance with the following

1 table:

| “Classes of animals: | Specified capacity: |
|--|----------------------------|
| Slaughter steers and heifers | 500 |
| Mature dairy cattle | 350 |
| Swine weighing over 55 pounds each. | 1,000 |
| Sheep | 5,000 |
| Turkeys | 27,500 |
| Laying hens and broilers | 50,000 |
| Horses | 300. |

2 “(E) SPECIAL RULE FOR COMMON OWNER-
3 SHIP.—All operations that are within the same
4 watershed shall be treated as one operation for
5 purposes of this paragraph if the animals con-
6 fined at such operations are under common
7 ownership or control or if such operations are
8 under common ownership or control.

9 “(2) OTHER DEFINITIONS.—In this subsection,
10 the following definitions apply:

11 “(A) ANIMAL OWNER.—The term ‘animal
12 owner’ means the person that has the primary
13 ownership interest in an animal or a person
14 who has a controlling, contractual, or beneficial
15 interest in an animal confined at a concentrated
16 animal feeding operation, including an employee
17 or agent of the person.

18 “(B) ANIMAL WASTE.—The term ‘animal
19 waste’ means the excreta or other waste of ani-
20 mals confined at a concentrated animal feeding
21 operation, including litter, bedding, a dead ani-

mal, a composted animal carcass, or other residual organic matter from a concentrated feeding operation.

“(C) CONTAINMANT STRUCTURE.—The term ‘containmant structure’ means a lagoon, pit, tank, or other structure used to receive and store animal waste, regardless of the length of time the waste remains in the structure.

“(D) DISCHARGE.—The term ‘discharge’ or ‘discharge of pollutants’ includes the release, directly or indirectly to the waters of the United States, of animal waste or nutrients, minerals, metals, or other substances derived from animal waste or any combination thereof.

“(3) GENERAL RULE.—Except in compliance with the terms of a permit issued under this section, it is unlawful to discharge pollutants from a concentrated animal feeding operation.

“(4) PERMITS.—

“(A) EXISTING PERMITS.—Any concentrated animal feeding operation operating on the date of the enactment of this Act under a permit issued under this section may continue to operate under the terms of the permit until the permit expires.

1 “(B) PERMITS REQUIRED FOR ALL OPER-
2 ATIONS.—After the last day of the 18-month
3 period beginning on the date of the enactment
4 of this subsection, it shall be unlawful to oper-
5 ate a concentrated animal feeding operation ex-
6 cept in compliance with an individual permit
7 issued under this section to the person respon-
8 sible for the day-to-day operations of the oper-
9 ation.

10 “(C) MONITORING AND RECORD-
11 KEEPING.—Permits issued or renewed for a
12 concentrated animal feeding operation under
13 this section shall, at a minimum, specify the
14 surface and ground water monitoring, record-
15 keeping, and reporting requirements necessary
16 to ensure that no discharge of pollutants is oc-
17 curring from the operation.

18 “(D) NEW REQUIREMENTS FOR PER-
19 MITS.—After the date of the enactment of this
20 subsection, a permit issued or renewed for a
21 concentrated animal feeding operation under
22 this section shall require that the operator of
23 the operation operate in conformance with—

1 “(i) applicable effluent limitations
2 adopted or revised under section 301, 302,
3 or 304;

4 “(ii) applicable standards of perform-
5 ance adopted under section 306; and

6 “(iii) after the last day of the 18-
7 month period beginning on the date of the
8 publication of guidance under paragraph
9 (5), a waste management plan approved
10 under paragraph (5).

11 “(E) REOPENER CLAUSE.—Any permit
12 issued or renewed for a concentrated animal
13 feeding operation after the date of the enact-
14 ment of this subsection but before the last day
15 of the 18-month period beginning on the date
16 of the publication of guidance under paragraph
17 (5) shall contain a clause stating that the per-
18 mit is not valid after such day unless the per-
19 mit is amended to incorporate a waste manage-
20 ment plan approved under paragraph (5).

21 “(5) WASTE MANAGEMENT PLANS.—

22 “(A) IN GENERAL.—Not more than 2
23 years after the date of the enactment of this
24 subsection, the Administrator, in consultation
25 with the Secretary of Agriculture, shall publish

1 detailed guidance on the preparation and imple-
2 mentation of waste management plans for con-
3 centrated animal feeding operations. Such guid-
4 ance shall establish the required elements of a
5 waste management plan and establish technical
6 standards for each element.

7 “(B) REQUIRED ELEMENTS.—The re-
8 quired elements of a waste management plan
9 for a concentrated animal feeding operation
10 shall include at least—

11 “(i) the names, addresses, and tele-
12 phone numbers of the operator of the oper-
13 ation and of all owners of animals confined
14 at the operation;

15 “(ii) the location, including latitude
16 and longitude, and number of acres of the
17 operation;

18 “(iii) a map indicating the general
19 layout of the operation, including the loca-
20 tion of each building or other structure,
21 the location of all portions of the contain-
22 ment system, the location and flow of any
23 surface water, the location of water supply
24 wells, and the direction and degree of all

1 grades within the property lines of the op-
2 eration;

3 “(iv) a certification by the operator
4 that the operator will be responsible for
5 and will ensure compliance with the animal
6 waste management plan and the require-
7 ments of this Act and a certification by
8 each owner of 1 or more animals confined
9 at the operation acknowledging the poten-
10 tial joint liability of the animal owner as
11 provided under paragraph (7) if the opera-
12 tor violates the terms of the permit or the
13 requirements of this Act with respect to a
14 discharge from the operation;

15 “(v) an estimate of the annual animal
16 production and the annual quantity of each
17 type of animal waste produced by the oper-
18 ation;

19 “(vi) the crop or vegetative cover
20 schedule for any agricultural lands owned
21 or leased by the operator;

22 “(vii) information necessary to deter-
23 mine the land area required for the appli-
24 cation of animal waste from the operation
25 as determined in accordance with the re-

1 quirements of this Act, including para-
2 graph (8), and any crop or vegetative cover
3 schedule specified in the plan;

4 “(viii) a schedule for periodic testing
5 of soil nutrient levels;

6 “(ix) a schedule for periodic testing of
7 animal waste nutrient levels;

8 “(x) information necessary to deter-
9 mine the land area available to the opera-
10 tor for application of animal waste, includ-
11 ing copies of deeds of title and written
12 agreements for use of lands not owned by
13 the operator for application of animal
14 waste;

15 “(xi) if methods of disposal for animal
16 waste other than land application by or on
17 behalf of the operator will be used, a de-
18 scription of those methods and the annual
19 quantity of animal waste to be disposed of
20 by each of these methods;

21 “(xii) a description of the methods,
22 structures, or practices that the operator
23 will use to prevent soil loss, surface water
24 pollution and ground water pollution while
25 minimizing odors and pests caused by ani-

mal waste during collection, storage, and application;

“(xiii) technical specifications for the design and construction of containment systems that the operator will use;

“(xiv) a description of methods, procedures, and practices that the operator will use for—

“(I) operation, monitoring, maintenance, and inspection of animal waste storage operations; and

“(II) handling, transportation, application, and treatment of animal waste, including storage volume, schedules for emptying storage operations, and application schedules, rates, and locations;

“(xv) a description of contingency measures that the operator will use to minimize environmental pollution resulting from any unexpected waste leak or discharge;

“(xvi) a description of practices and procedures that the operator will use for maintaining records detailing compliance

1 with the animal waste management plan
2 and this Act; and

3 “(xvii) any additional requirements,
4 on a State-by-State or county-by-county
5 basis, imposed by a Federal, State, or local
6 law (including a regulation).

7 “(C) SUBMISSION OF PROPOSED PLANS.—

8 An operator of a concentrated animal feeding
9 operation who is seeking a permit under this
10 section shall develop a waste management plan
11 for the operation, and submit that plan to the
12 Administrator for approval, under this para-
13 graph.

14 “(D) PLAN APPROVAL.—Within 60 days of
15 the receipt of a proposed waste management
16 plan, the Administrator shall approve or dis-
17 approve that plan. The Administrator shall ap-
18 prove a proposed plan if (i) it contains the ele-
19 ments required under subparagraph (B), (ii) it
20 is consistent with guidance published by the
21 Administrator under subparagraph (A), (iii) it
22 conforms to technical standards published pur-
23 suant to this paragraph, and (iv) the Adminis-
24 trator has conducted an onsite inspection of the
25 operation and determined that the plan is ap-

1 propriate for the operation. The Administrator
2 shall notify the applicant, in writing, of the ap-
3 proval or disapproval of a plan, including the
4 reasons for any disapproval.

5 “(E) REVISION OF GUIDANCE AND
6 PLANS.—From time to time, but not less than
7 every 5 years, the Administrator shall revise the
8 guidance for preparation of waste management
9 plans under this paragraph to incorporate im-
10 provements in monitoring, recordkeeping, waste
11 handling and disposal methods, and other plan
12 elements as they become technologically feasible
13 and economically achievable. Not later than 6
14 months after the publication of revised guidance
15 under this subparagraph, the Administrator
16 shall not approve a waste management plan
17 under this paragraph unless it complies with
18 the revised guidance.

19 “(6) REVISION OF REGULATIONS.—

20 “(A) IN GENERAL.—Not later than 2 years
21 after the date of the enactment of this sub-
22 section, the Administrator shall revise regula-
23 tions issued to carry out this Act to ensure that
24 concentrated animal feeding operations employ
25 the best available technology economically

1 achievable, or, in the case of new or expanded
2 concentrated animal feeding operations, the
3 best available demonstrated technology nec-
4 essary to achieve no discharge of pollutants.

5 “(B) MINIMUM REQUIREMENTS.—Effluent
6 limitations for existing and new concentrated
7 animal feeding operations, standards of per-
8 formance for new concentrated animal feeding
9 operations, and pretreatment standards for new
10 and existing concentrated animal feeding oper-
11 ations revised pursuant to this paragraph shall,
12 at a minimum—

13 “(i) require, within 3 years after the
14 date of the enactment of this subsection,
15 that new containment structures and waste
16 application systems be sited and con-
17 structed to minimize the risk of discharges
18 of pollutants to the surface or ground wa-
19 ters of the United States;

20 “(ii) prohibit, within 5 years after
21 such date of enactment, the use of unlined
22 containment structures or the use of any
23 other containment structure that poses a
24 significant risk of pollution to surface or

1 ground water due to the location or con-
2 struction of such structure;

3 “(iii) eliminate, within 10 years of
4 such date of enactment, open-air lagoons
5 for the storage of animal waste;

6 “(iv) eliminate discharges of pollut-
7 ants to surface and ground water;

8 “(v) eliminate the atmospheric deposi-
9 tion of nutrients derived from concentrated
10 animal feeding operations to waters of the
11 United States;

12 “(vi) significantly reduce the liquid
13 content of wastes; and

14 “(vii) promote technologies and pro-
15 duction practices that minimize the need
16 for large-scale storage of animal waste.

17 “(7) LIABILITY OF ANIMAL OWNERS.—

18 “(A) IN GENERAL.—If the operator of a
19 concentrated animal feeding operation is liable
20 for a civil penalty imposed under section 309
21 with respect to a violation of this Act or a per-
22 mit issued under this Act for a discharge from
23 the operation, each owner of an animal confined
24 at the operation during the period of violation

1 shall be jointly liable, subject to subparagraph
2 (B), for such penalty.

3 “(B) LIMITATION.—The joint liability of
4 the owner of an animal confined at a con-
5 centrated animal feeding operation under this
6 paragraph shall be equal to the amount deter-
7 mined by multiplying the amount of the civil
8 penalty imposed on the operator of the oper-
9 ation by the ratio that the number of animals
10 owned by the owner and confined at the oper-
11 ation during the period of the violation bears to
12 the total number of animals confined at the op-
13 eration during such period.

14 “(C) REGULATIONS.—The Administrator
15 shall issue such regulations and take such ac-
16 tions as may be necessary to implement this
17 subsection, including such regulations and ac-
18 tions as may be necessary to ensure each owner
19 of an animal confined at the operation receives
20 the same notice and opportunity for a hearing
21 with respect to imposition of any liability under
22 this paragraph as the operator of the operation
23 receives with respect to imposition of such li-
24 ability under section 309.

25 “(8) ANIMAL WASTE CONTROL.—

1 “(A) MAXIMUM LEVELS FOR NITROGEN
2 AND PHOSPHORUS.—The application of animal
3 waste to land by a person shall be considered
4 a discharge of pollutants for purposes of this
5 subsection if (taking into account all sources of
6 nutrients, including commercial fertilizer) the
7 application of animal waste would result in the
8 application of nitrogen or phosphorus in a
9 quantity that exceeds the reasonably anticipated
10 agronomic nutrient uptake of the vegetative
11 cover growing or to be grown on the land.

12 “(B) MAXIMUM LEVELS FOR OTHER SUB-
13 STANCES.—

14 “(i) ESTABLISHMENT.—The Adminis-
15 trator, in consultation with the Secretary
16 of Agriculture, shall establish maximum
17 permitted levels for other nutrients, min-
18 erals, metals, or other substances found in
19 animal waste whose presence in land above
20 the reasonably anticipated agronomic up-
21 take of the vegetative cover growing or to
22 be grown on the land would pose a signifi-
23 cant threat of pollution to surface or
24 ground water.

1 “(ii) EXCESS LEVELS.—The applica-
2 tion of animal waste to land by any person
3 shall be considered a discharge of pollut-
4 ants for purposes of this subsection if fol-
5 lowing the application of the animal waste
6 the level of a substance referred to in
7 clause (i) would exceed the maximum per-
8 missible level established for the substance
9 by the Administrator.

10 “(C) APPLICATION OF WASTE TO LAND.—

11 “(i) AERIAL SPRAYING.—The Admin-
12 istrator shall establish minimum distances
13 from residences and environmentally sen-
14 sitive locations (including distances from
15 surface water, water supply wells, wetlands
16 not used for water treatment purposes,
17 floodplains, and the drainage areas of
18 drainage wells, drainage ditches, tile drain-
19 age lines, and subsurface drainage inlets)
20 within which animal waste shall not be ap-
21 plied by aerial spraying. Any application by
22 aerial spraying within the minimum dis-
23 tances established under this subparagraph
24 shall be considered a discharge of pollut-
25 ants for purposes of this subsection.

1 “(ii) OTHER RESTRICTIONS.—The Ad-
2 ministrators may establish other restrictions
3 on aerial spraying (including a prohibition
4 on aerial spraying) that minimize the po-
5 tential of water pollution from animal
6 waste.

7 “(iii) OTHER APPLICATIONS.—The
8 application of animal waste to ice, snow,
9 frozen soil, or water saturated soil shall be
10 considered to be a discharge of pollutants
11 for purposes of this subsection.

12 “(D) CONTAINMENT OF ALL WASTE.—Any
13 containment structure for animal waste shall
14 retain all animal waste produced by the oper-
15 ation between applications, including runoff
16 that runs through or into any area or structure
17 in which animal waste is present.

18 “(E) CONTAINMENT SYSTEM FOR WET
19 WASTE OPERATIONS.—The containment system
20 for a wet waste operation shall include—

21 “(i) emergency shutoff devices that
22 are designed and placed in a manner that
23 ensures the fastest practicable containment
24 of animal waste in the event of an unex-
25 pected leakage or other discharge; and

1 “(ii) failsafe structures that will con-
2 tain, in the event that a containment struc-
3 ture breaches or overflows, a minimum
4 quantity of animal waste equal to the max-
5 imum quantity loaded into the containment
6 structure in any 48-hour period.

7 “(F) DISCONTINUATION OF USE OF ANI-
8 MAL WASTE STORAGE STRUCTURES.—An opera-
9 tor that ceases use of an animal waste storage
10 structure shall, not later than 180 days after
11 the date on which use of the structure ceases,
12 remove and dispose of all animal waste from
13 the structure in accordance with this Act.

14 “(G) APPLICATION OF ANIMAL WASTE ON
15 OTHER LAND.—Before applying animal waste
16 from a concentrated animal feeding operation
17 on land other than land owned by the animal
18 owner or operator of the operation, the animal
19 owner, and the owner of the land where the
20 waste will be applied shall execute a written
21 agreement that includes such terms and condi-
22 tions as are necessary to ensure that the waste
23 is applied in accordance with this subsection.

24 “(9) SAVINGS PROVISION.—Nothing in this sub-
25 section shall prevent the Administrator, or a State

1 in any case in which the State is administering a
2 State permit program under this section, from es-
3 tablishing more stringent requirements, including
4 the denial of permits under this section for new or
5 expanded concentrated animal feeding operations.”.

○