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**SUBSTITUTE HOUSE BILL 1135**

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**State of Washington                      61st Legislature                      2009 Regular Session**

**By** House Ecology & Parks (originally sponsored by Representatives McCoy, Chase, Kenney, Hinkle, and Nelson)

READ FIRST TIME 02/17/09.

1            AN ACT Relating to exempting agricultural anaerobic digesters from  
2 solid waste handling permitting; amending RCW 43.21B.300, 43.21B.310,  
3 70.95.170, and 70.95.315; adding a new section to chapter 70.95 RCW;  
4 and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 70.95 RCW  
7 to read as follows:

8            (1) An anaerobic digester that complies with the conditions  
9 specified in this section is exempt from the permitting requirements of  
10 this chapter. To qualify for the exemption, an anaerobic digester must  
11 meet the following conditions:

12            (a) The owner or operator must provide the department or the  
13 jurisdictional health department with at least thirty days' notice of  
14 intent to operate under the conditions specified in this section, and  
15 comply with any guidelines issued under subsection (2) of this section;

16            (b) The anaerobic digester must process at least fifty percent  
17 livestock manure by volume;

18            (c) The anaerobic digester may process no more than thirty percent

1 imported organic waste-derived material by volume, and must comply with  
2 subsection (3) of this section;

3 (d) The anaerobic digester must comply with design and operating  
4 standards in the natural resources conservation service's conservation  
5 practice standard code 366 in effect as of the effective date of this  
6 section;

7 (e) Digestate must:

8 (i) Be managed in accordance with a dairy nutrient management plan  
9 under chapter 90.64 RCW that includes elements necessary to address  
10 management and use of digestate;

11 (ii) Meet compost quality standards concerning pathogens,  
12 stability, nutrient testing, and metals before it is distributed for  
13 off-site use, or be sent to an off-site permitted compost facility for  
14 further treatment to meet compost quality standards; or

15 (iii) Be processed or managed in an alternate manner approved by  
16 the department;

17 (f) The owner or operator must allow inspection by the department  
18 or jurisdictional health department at reasonable times to verify  
19 compliance with the conditions specified in this section; and

20 (g) The owner or operator must submit an annual report to the  
21 department or the jurisdictional health department concerning use of  
22 nonmanure material in the anaerobic digester and any required  
23 compliance testing.

24 (2) By August 1, 2009, the department and the department of  
25 agriculture, in consultation with the department of health, shall make  
26 available to anaerobic digester owners and operators clearly written  
27 guidelines for the anaerobic codigestion of livestock manure and  
28 organic waste-derived material. The guidelines must explain the steps  
29 necessary for an owner or operator to meet the conditions specified in  
30 this section for an exemption from the permitting requirements of this  
31 chapter.

32 (3) Any imported organic waste-derived material must:

33 (a) Be preconsumer in nature;

34 (b) Be fed into the anaerobic digester within thirty-six hours of  
35 receipt at the anaerobic digester;

36 (c) If it is likely to contain animal byproducts, be previously  
37 source-separated at a facility licensed to process food by the United

1 States department of agriculture, the United States food and drug  
2 administration, the Washington state department of agriculture, or  
3 other applicable regulatory agency;

4 (d) If it contains bovine processing waste, be derived from animals  
5 approved by the United States department of agriculture food safety and  
6 inspection service and not contain any specified risk material;

7 (e) If it contains sheep carcasses or sheep processing waste, not  
8 be fed into the anaerobic digester;

9 (f) Be stored and handled in a manner that protects surface water  
10 and groundwater and complies with best management practices;

11 (g) Be stored in structures that either comply with the natural  
12 resources conservation service's conservation practice standard code  
13 313 in effect as of the effective date of this section or meet the  
14 construction industry standard of the American concrete institute or  
15 American institute of steel construction for these structures, or be  
16 certified to be effective by a representative of the natural resources  
17 conservation service; and

18 (h) Be managed to prevent migration of nuisance odors beyond  
19 property boundaries and minimize attraction of flies, rodents, and  
20 other vectors.

21 (4) Digestate that is managed in accordance with a dairy nutrient  
22 management plan under chapter 90.64 RCW that includes elements  
23 necessary to address management and use of digestate shall no longer be  
24 considered a solid waste. Use of digestate from an anaerobic digester  
25 that complies with the conditions specified in this section is exempt  
26 from the permitting requirements of this chapter.

27 (5) An anaerobic digester that does not comply with the conditions  
28 specified in this section may be subject to the permitting requirements  
29 of this chapter. In addition, violations of the conditions specified  
30 in this section are subject to provisions in RCW 70.95.315.

31 (6) As used in this section:

32 (a) "Anaerobic digester" means a vessel that processes organic  
33 material into biogas and digestate using microorganisms in a  
34 decomposition process within a closed, oxygen-free container;

35 (b) "Best management practices" means managerial practices that  
36 prevent or reduce water pollution;

37 (c) "Digestate" means both solid and liquid substances that remain

1 following anaerobic digestion of organic material in an anaerobic  
2 digester;

3 (d) "Imported" means originating off of the farm or other site  
4 where the anaerobic digester is being operated; and

5 (e) "Organic waste-derived material" has the same meaning as  
6 defined in RCW 15.54.270 and any other organic wastes approved by the  
7 department, except for organic waste-derived material collected through  
8 municipal commercial and residential solid waste collection programs.

9 **Sec. 2.** RCW 43.21B.300 and 2007 c 147 s 9 are each amended to read  
10 as follows:

11 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
12 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144,  
13 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be imposed by a  
14 notice in writing, either by certified mail with return receipt  
15 requested or by personal service, to the person incurring the penalty  
16 from the department or the local air authority, describing the  
17 violation with reasonable particularity. Within thirty days after the  
18 notice is received, the person incurring the penalty may apply in  
19 writing to the department or the authority for the remission or  
20 mitigation of the penalty. Upon receipt of the application, the  
21 department or authority may remit or mitigate the penalty upon whatever  
22 terms the department or the authority in its discretion deems proper.  
23 The department or the authority may ascertain the facts regarding all  
24 such applications in such reasonable manner and under such rules as it  
25 may deem proper and shall remit or mitigate the penalty only upon a  
26 demonstration of extraordinary circumstances such as the presence of  
27 information or factors not considered in setting the original penalty.

28 (2) Any penalty imposed under this section may be appealed to the  
29 pollution control hearings board in accordance with this chapter if the  
30 appeal is filed with the hearings board and served on the department or  
31 authority thirty days after the date of receipt by the person penalized  
32 of the notice imposing the penalty or thirty days after the date of  
33 receipt of the notice of disposition of the application for relief from  
34 penalty.

35 (3) A penalty shall become due and payable on the later of:

36 (a) Thirty days after receipt of the notice imposing the penalty;

1 (b) Thirty days after receipt of the notice of disposition on  
2 application for relief from penalty, if such an application is made; or

3 (c) Thirty days after receipt of the notice of decision of the  
4 hearings board if the penalty is appealed.

5 (4) If the amount of any penalty is not paid to the department  
6 within thirty days after it becomes due and payable, the attorney  
7 general, upon request of the department, shall bring an action in the  
8 name of the state of Washington in the superior court of Thurston  
9 county, or of any county in which the violator does business, to  
10 recover the penalty. If the amount of the penalty is not paid to the  
11 authority within thirty days after it becomes due and payable, the  
12 authority may bring an action to recover the penalty in the superior  
13 court of the county of the authority's main office or of any county in  
14 which the violator does business. In these actions, the procedures and  
15 rules of evidence shall be the same as in an ordinary civil action.

16 (5) All penalties recovered shall be paid into the state treasury  
17 and credited to the general fund except those penalties imposed  
18 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
19 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
20 disposition of which shall be governed by that provision, RCW  
21 70.105.080, which shall be credited to the hazardous waste control and  
22 elimination account created by RCW 70.105.180, RCW 90.56.330, which  
23 shall be credited to the coastal protection fund created by RCW  
24 90.48.390, and RCW 90.76.080, which shall be credited to the  
25 underground storage tank account created by RCW 90.76.100.

26 **Sec. 3.** RCW 43.21B.310 and 2004 c 204 s 5 are each amended to read  
27 as follows:

28 (1) Except as provided in RCW 90.03.210(2), any order issued by the  
29 department or local air authority pursuant to RCW 43.27A.190,  
30 70.94.211, 70.94.332, 70.95.315, 70.105.095, (~~(43.27A.190)~~) 86.16.020,  
31 88.46.070, or 90.48.120(2) or any provision enacted after July 26,  
32 1987, or any permit, certificate, or license issued by the department  
33 may be appealed to the pollution control hearings board if the appeal  
34 is filed with the board and served on the department or authority  
35 within thirty days after the date of receipt of the order. Except as  
36 provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the  
37 exclusive means of appeal of such an order.

1 (2) The department or the authority in its discretion may stay the  
2 effectiveness of an order during the pendency of such an appeal.

3 (3) At any time during the pendency of an appeal of such an order  
4 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the  
5 hearings board for a stay of the order or for the removal thereof.

6 (4) Any appeal must contain the following in accordance with the  
7 rules of the hearings board:

8 (a) The appellant's name and address;

9 (b) The date and docket number of the order, permit, or license  
10 appealed;

11 (c) A description of the substance of the order, permit, or license  
12 that is the subject of the appeal;

13 (d) A clear, separate, and concise statement of every error alleged  
14 to have been committed;

15 (e) A clear and concise statement of facts upon which the requester  
16 relies to sustain his or her statements of error; and

17 (f) A statement setting forth the relief sought.

18 (5) Upon failure to comply with any final order of the department,  
19 the attorney general, on request of the department, may bring an action  
20 in the superior court of the county where the violation occurred or the  
21 potential violation is about to occur to obtain such relief as  
22 necessary, including injunctive relief, to insure compliance with the  
23 order. The air authorities may bring similar actions to enforce their  
24 orders.

25 (6) An appealable decision or order shall be identified as such and  
26 shall contain a conspicuous notice to the recipient that it may be  
27 appealed only by filing an appeal with the hearings board and serving  
28 it on the department within thirty days of the date of receipt.

29 **Sec. 4.** RCW 70.95.170 and 1998 c 156 s 3 are each amended to read  
30 as follows:

31 Except as provided otherwise in RCW 70.95.300, 70.95.305 (~~(or)~~),  
32 70.95.306, 70.95.310, or section 1 of this act, after approval of the  
33 comprehensive solid waste plan by the department no solid waste  
34 handling facility or facilities shall be maintained, established, or  
35 modified until the county, city, or other person operating such site  
36 has obtained a permit pursuant to RCW 70.95.180 or 70.95.190.

1       **Sec. 5.** RCW 70.95.315 and 2005 c 510 s 7 are each amended to read  
2 as follows:

3       (1) The department may assess a civil penalty in an amount not to  
4 exceed one thousand dollars per day per violation to any person exempt  
5 from solid waste permitting in accordance with RCW 70.95.300,  
6 70.95.305, (~~or~~) 70.95.306, or section 1 of this act who fails to  
7 comply with the terms and conditions of the exemption. Each such  
8 violation shall be a separate and distinct offense, and in the case of  
9 a continuing violation, each day's continuance shall be a separate and  
10 distinct violation. The penalty provided in this section shall be  
11 imposed pursuant to RCW 43.21B.300.

12       (2) If a person violates a provision of any of the sections  
13 referenced in subsection (1) of this section, the department may issue  
14 an appropriate order to ensure compliance with the conditions of the  
15 exemption. Such an order may be appealed pursuant to RCW 43.21B.310.

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