

105TH CONGRESS
1ST SESSION

S. 1323

To regulate concentrated animal feeding operations for the protection of the environment and public health, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 1997

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To regulate concentrated animal feeding operations for the protection of the environment and public health, 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 “Animal Agriculture
5 Reform Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) animal agriculture is a critical part of the
9 agricultural economy of the United States and is an
10 important source of food and consumer products;

1 (2) the continuation of a strong animal agri-
2 culture industry should be supported;

3 (3) animal waste has been identified as a sig-
4 nificant source of water pollution in many areas of
5 the United States and inadequate management of
6 animal waste continues to pose a significant threat
7 to the environment and public health;

8 (4) the adoption of animal waste management
9 plans by concentrated animal feeding operations will
10 help to ensure that the continued success and
11 growth of the animal agriculture industry is compat-
12 ible with protection of the environment and public
13 health; and

14 (5) oversight of animal waste management
15 planning by the Secretary will enhance environ-
16 mental protection under the Federal Water Pollution
17 Control Act (33 U.S.C. 1251 et seq.).

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) **ANIMAL OWNER.**—The term “animal
21 owner” means the person that has the primary own-
22 ership, controlling, or beneficial interest in the ani-
23 mals in a concentrated animal feeding operation, in-
24 cluding an employee or agent of the person.

1 (2) ANIMAL WASTE.—The term “animal waste”
2 means the excreta or other associated waste of an
3 animal, including litter, bedding, a dead animal, a
4 composted animal carcass, or other residual organic
5 matter from a concentrated animal feeding oper-
6 ation.

7 (3) ANIMAL WASTE MANAGEMENT PLAN.—The
8 term “animal waste management plan” means a
9 written statement submitted by the operator of a
10 concentrated animal feeding operation to the Sec-
11 retary detailing the manner in which the operation
12 will comply with this Act.

13 (4) ANIMAL WEIGHT CAPACITY.—The term
14 “animal weight capacity” means the product ob-
15 tained by multiplying—

16 (A) the maximum number of animals in a
17 concentrated animal feeding operation at any 1
18 time during a year; and

19 (B) the average weight of such an animal
20 during a production cycle (as defined by the
21 Secretary).

22 (5) APPLICATION.—The term “application”
23 means laying, spreading on, irrigating, injecting, or
24 otherwise placing animal waste on land by any
25 means.

1 (6) APPROVED PLAN.—The term “approved
2 plan” means an animal waste management plan for
3 which a written notice of approval has been issued
4 by the Secretary, and is effective, under this Act.

5 (7) CONCENTRATED ANIMAL FEEDING OPER-
6 ATION.—

7 (A) IN GENERAL.—The term “con-
8 centrated animal feeding operation” means any
9 livestock or poultry feeding operation that—

10 (i)(I) confines animals to areas that
11 are totally roofed;

12 (II) if the operation does not confine
13 animals to areas that are totally roofed,
14 confines animals to areas where the animal
15 density, measured as the ratio of the num-
16 ber of animals to the acreage of the areas
17 in which the animals are confined, exceeds
18 a level established by the Secretary on the
19 basis of the potential for surface and
20 ground water pollution from animal waste;
21 or

22 (III) collects animal excreta for dis-
23 posal, storage, or application with a me-
24 chanical or flushing system or by other
25 means;

1 (ii) holds animals for 45 days or more
2 during any 1-year period; and

3 (iii) has an animal weight capacity of
4 more than 200,000 pounds for animals
5 other than cattle or more than 400,000
6 pounds for cattle.

7 (B) INCLUSIONS.—The term “concentrated
8 animal feeding operation” includes—

9 (i) all structures and land used for the
10 collection, storage, treatment, or applica-
11 tion of animal waste from an operation de-
12 scribed in subparagraph (A); and

13 (ii) each of 2 or more operations de-
14 scribed in subparagraph (A) in which the
15 animals are under common ownership or
16 control, if the combined animal weight ca-
17 pacity of the operations exceeds the
18 amounts described in subparagraph
19 (A)(iii).

20 (8) CONTAINMENT STRUCTURE.—The term
21 “containment structure” means a lagoon, pit, tank,
22 or other structure used to receive and store animal
23 waste, regardless of the length of time the waste re-
24 mains in such a structure.

1 (9) CONTAINMENT SYSTEM.—The term “con-
2 tainment system” means all structures or devices
3 used exclusively or partly for the collection, storage,
4 composting, transportation, or application of animal
5 waste from a concentrated animal feeding operation.

6 (10) DEPARTMENT.—The term “Department”
7 means the Department of Agriculture.

8 (11) DRY WASTE OPERATION.—The term “dry
9 waste operation” means a concentrated animal feed-
10 ing operation in which animal waste is collected and
11 stored exclusively in a dry form.

12 (12) EARTHEN LAGOON.—The term “earthen
13 lagoon” means an earthen cavity or structure, cov-
14 ered or uncovered, that receives and stores for any
15 period of time animal waste from animals in a con-
16 centrated animal feeding operation.

17 (13) FORMED STORAGE STRUCTURE.—The
18 term “formed storage structure” means a structure,
19 covered or uncovered, that has walls and a floor con-
20 structed of concrete, concrete block, wood, steel, or
21 similar material, including plastic, rubber, fiberglass,
22 or other synthetic material.

23 (14) OPERATOR.—

1 (A) IN GENERAL.—The term “operator”
2 means a person that owns or controls a con-
3 centrated animal feeding operation.

4 (B) AGENTS.—If the operator of a con-
5 centrated animal feeding operation is not the
6 same person as the animal owner, the operator
7 shall be considered to be an agent of the animal
8 owner, notwithstanding any contract or other
9 agreement entered into between the owner and
10 the operator.

11 (15) SECRETARY.—The term “Secretary”
12 means the Secretary of Agriculture.

13 (16) WET WASTE OPERATION.—The term “wet
14 waste operation” means a concentrated animal feed-
15 ing operation in which animal waste is collected and
16 stored in a liquid or semiliquid form.

17 **SEC. 4. PLAN APPROVAL.**

18 (a) IN GENERAL.—The Secretary shall establish and
19 carry out an animal waste management program under
20 which the Secretary shall approve an animal waste man-
21 agement plan submitted by an animal owner if the plan
22 meets the requirements of this Act.

23 (b) INSPECTION; NOTICE.—Prior to approving an
24 animal waste management plan, the Secretary, acting
25 through the Chief of the Natural Resources Conservation

1 Service, shall conduct an on-site inspection of the con-
2 centrated animal feeding operation to determine whether
3 the proposed animal waste management plan adequately
4 takes into account the specific circumstances of the oper-
5 ation.

6 (c) COMPLIANCE.—Approval of an animal waste
7 management plan shall be conditioned on the concentrated
8 animal feeding operation remaining in compliance with the
9 plan and this Act.

10 (d) OPERATION OF EXISTING CONCENTRATED ANI-
11 MAL FEEDING OPERATIONS.—Beginning on the date that
12 is 18 months after the date of enactment of this Act, a
13 concentrated animal feeding operation in existence on the
14 date of enactment of this Act shall not operate unless the
15 animal owner of the operation has obtained approval of
16 an animal waste management plan for the operation from
17 the Secretary.

18 (e) CONSTRUCTION OR EXPANSION OF CON-
19 CENTRATED ANIMAL FEEDING OPERATIONS.—The con-
20 struction or expansion of a concentrated animal feeding
21 operation, or the expansion of a livestock or poultry feed-
22 ing operation that would make the operation a con-
23 centrated animal feeding operation, is prohibited unless
24 the animal owner of the operation has obtained approval
25 of an animal waste management plan from the Secretary.

1 (f) DURATION.—

2 (1) IN GENERAL.—Approval of an animal waste
3 management plan may be effective for any period
4 not to exceed 5 years.

5 (2) DEADLINE FOR COMPLETION.—Approval of
6 an animal waste management plan for the construc-
7 tion or expansion of a concentrated animal feeding
8 operation shall expire if the construction or expan-
9 sion is not completed within 1 year after the date on
10 which the approval is provided.

11 (3) RENEWAL.—

12 (A) IN GENERAL.—An application for re-
13 newal of approval of an animal waste manage-
14 ment plan shall be submitted to the Secretary
15 at least 180 days before the date on which the
16 approval expires.

17 (B) TERMS AND CONDITIONS.—Renewal of
18 approval of an animal waste management plan
19 shall be subject to the terms and conditions
20 that apply to the approval of an animal waste
21 management plan for a concentrated animal
22 feeding operation at the time of renewal.

23 **SEC. 5. ANIMAL WASTE MANAGEMENT PLANS.**

24 (a) IN GENERAL.—In consultation with the Adminis-
25 trator of the Environmental Protection Agency, the Sec-

1 retary shall establish the required elements of an animal
2 waste management plan and establish technical standards
3 for each element.

4 (b) PURPOSE.—The required elements of an animal
5 waste management plan shall be designed to prevent dis-
6 charge of animal waste into surface or ground water.

7 (c) MINIMUM REQUIRED ELEMENTS.—In addition to
8 any other requirements imposed under this Act, the re-
9 quired elements of an animal waste management plan for
10 a concentrated animal feeding operation shall include—

11 (1) the names, addresses, and telephone num-
12 bers of the animal owner and operator;

13 (2) the location and number of acres of the con-
14 centrated animal feeding operation;

15 (3) the location of the properties adjoining the
16 concentrated animal feeding operation and the
17 names, addresses, and telephone numbers of the
18 owners of the properties;

19 (4) if any animal waste will be applied on land
20 other than land owned by the animal owner or oper-
21 ator, a copy of each written agreement executed be-
22 tween the animal owner and the owner of the land
23 where the waste will be applied that relates to the
24 waste;

1 (5) a map indicating the general layout of the
2 concentrated animal feeding operation, including—

3 (A) the location of each building or other
4 structure;

5 (B) the location of all portions of the con-
6 tainment system;

7 (C) the location and flow of any surface
8 water; and

9 (D) the direction and degree of all grades
10 within the property lines of the concentrated
11 animal feeding operation;

12 (6) a certification by the animal owner that the
13 animal owner will be responsible for and will ensure
14 compliance with the animal waste management plan
15 and the requirements of this Act;

16 (7) information necessary to determine the land
17 area required for the application of animal waste
18 from the concentrated animal feeding operation in
19 accordance with the requirements of this Act and
20 any crop or cover schedule specified in the plan;

21 (8) a schedule for periodic testing of soil nutri-
22 ent levels;

23 (9) a schedule for periodic testing of animal
24 waste nutrient levels;

1 (10) an estimate of the annual animal produc-
2 tion and the annual quantity of each type of animal
3 waste produced by the concentrated animal feeding
4 operation;

5 (11) a description of the nutrient management
6 methods, procedures, and practices to be used by the
7 concentrated animal feeding operation to ensure that
8 nutrients from all sources, including animal waste
9 and commercial fertilizer, are applied in accordance
10 with this Act;

11 (12) a description of the methods, structures,
12 or practices to be used by the concentrated animal
13 feeding operation to prevent or minimize—

14 (A) soil loss;

15 (B) surface water pollution;

16 (C) ground water pollution; and

17 (D) odors caused by animal waste during
18 collection, storage, and application;

19 (13) technical specifications for the design and
20 construction of containment systems to be used by
21 the concentrated animal feeding operation;

22 (14) a description of methods, procedures, and
23 practices to be used by the concentrated animal
24 feeding operation for—

1 (A) operation, monitoring, maintenance,
2 and inspection of animal waste storage facili-
3 ties; and

4 (B) handling, transportation, application,
5 and treatment of animal waste, including stor-
6 age volume, schedules for emptying storage fa-
7 cilities, and application schedules, rates, and lo-
8 cations;

9 (15) a description of contingency measures to
10 be used by the concentrated animal feeding oper-
11 ation to minimize environmental pollution resulting
12 from any unexpected waste leak or discharge;

13 (16) a description of practices and procedures
14 to be used by the concentrated animal feeding oper-
15 ation for the keeping of records detailing compliance
16 with the animal waste management plan and this
17 Act; and

18 (17) any additional requirements necessary to
19 comply with applicable Federal, State, and local laws
20 (including regulations).

21 **SEC. 6. ANIMAL WASTE CONTROL.**

22 (a) **MAXIMUM LEVELS FOR NITROGEN AND PHOS-**
23 **PHORUS.**—The application of animal waste to land by any
24 person is prohibited if (taking into account all sources of
25 nutrients, including commercial fertilizer) the application

1 of animal waste would result in the application of nitrogen
2 or phosphorus in a quantity that—

3 (1) exceeds the quantity necessary to meet crop
4 nutrient requirements; and

5 (2) significantly increases the risk of increased
6 soil toxicity or the pollution of surface or ground
7 water.

8 (b) MAXIMUM LEVELS FOR OTHER SUBSTANCES.—

9 (1) ESTABLISHMENT.—In consultation with the
10 Administrator of the Environmental Protection
11 Agency, the Secretary shall establish maximum per-
12 mitted levels for other nutrients, minerals, metals, or
13 other substances found in animal waste whose pres-
14 ence in land above the levels would pose a significant
15 threat of environmental pollution or soil toxicity.

16 (2) EXCESS LEVELS.—The application of ani-
17 mal waste to land by any person is prohibited if fol-
18 lowing the application of the animal waste the level
19 of a substance referred to in paragraph (1) would
20 exceed the maximum level established for the sub-
21 stance by the Secretary.

22 (c) APPLICATION OF WASTE TO LAND.—

23 (1) AERIAL SPRAYING.—The Secretary shall es-
24 tablish minimum distances from environmentally
25 sensitive locations (including distances from surface

1 water, water supply wells, wetlands not used for
2 water treatment purposes, floodplains, and the
3 drainage areas of drainage wells, drainage ditches,
4 tile drainage lines, and subsurface drainage inlets)
5 within which animal waste shall not be applied by
6 aerial spraying.

7 (2) OTHER RESTRICTIONS.—The Secretary may
8 establish other restrictions on aerial spraying (in-
9 cluding a prohibition on aerial spraying) that mini-
10 mize the potential of water pollution from animal
11 waste.

12 (3) OTHER APPLICATIONS.—Animal waste shall
13 not be applied on ice, snow, frozen soil, or water
14 saturated soil.

15 (d) CONTAINMENT OR TREATMENT OF ALL
16 WASTE.—

17 (1) CONTAINMENT.—Any containment system
18 shall retain all animal waste produced by the oper-
19 ation between applications, including runoff that
20 runs through or into any area or structure in which
21 animal waste is present.

22 (2) TREATMENT OF EXCESS WASTE.—If a wet
23 waste operation produces more animal waste than
24 can be applied to land in accordance with this Act
25 or used for another purpose determined by the Sec-

1 retary to pose no significant risk of water pollution,
2 the operation shall treat the excess animal waste in
3 accordance with Federal, State, and local laws (in-
4 cluding regulations) governing the treatment of
5 human waste.

6 (3) STORAGE OF EXCESS WASTE.—If a dry
7 waste operation produces more animal waste than
8 can be applied to land in accordance with this Act
9 or used for another purpose determined by the Sec-
10 retary to pose no significant risk of water pollution,
11 animal waste of the operation shall be stored only in
12 a covered, formed storage structure constructed in
13 accordance with technical standards established by
14 the Secretary that ensure that the structure has the
15 structural integrity to withstand expected internal
16 and external load pressures and will not discharge
17 animal waste.

18 (e) CONSTRUCTION AND USE OF CERTAIN STRUC-
19 TURES.—An owner or operator of a concentrated animal
20 feeding operation shall not construct or, effective begin-
21 ning on the date that is 3 years after the date of enact-
22 ment of this Act, use for the storage of animal waste—

23 (1) a containment system, if any portion of the
24 system is located below the highest ground water
25 level that occurs during the year; or

1 (2) an earthen lagoon that is—

2 (A) located in an area with characteristics
3 (including topology, hydrology, and soil com-
4 position) that do not allow (according to tech-
5 nical standards established by the Secretary)
6 the construction of an earthen lagoon without a
7 significant risk of water pollution from animal
8 waste;

9 (B) located within minimum distances es-
10 tablished by the Secretary from environmentally
11 sensitive locations, including distances from
12 surface water, water supply wells, wetlands not
13 used for water treatment purposes, floodplains,
14 and the drainage areas of drainage wells, drain-
15 age ditches, tile drainage lines, and subsurface
16 drainage inlets; or

17 (C) not lined in accordance with technical
18 standards established by the Secretary that use
19 the best available technology.

20 (f) CONTAINMENT SYSTEM FOR WET WASTE OPER-
21 ATIONS.—The containment system for a wet waste oper-
22 ation shall include—

23 (1) emergency shutoff devices that are designed
24 and placed in a manner that ensures the fastest

1 practicable containment of animal waste in the event
2 of an unexpected leakage or other discharge; and

3 (2) failsafe structures that will contain, in the
4 event that a containment structure breaches or over-
5 flows, a minimum quantity of animal waste equal to
6 the maximum quantity loaded into the containment
7 structure in any 48-hour period.

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

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

22 **SEC. 7. RECORDKEEPING.**

23 (a) IN GENERAL.—An animal owner shall maintain
24 a current animal waste management plan and records that

1 are sufficient to demonstrate compliance with the plan and
2 this Act.

3 (b) DURATION.—The animal owner shall retain the
4 records for not less than 3 years.

5 **SEC. 8. ENFORCEMENT; PENALTIES.**

6 (a) CLOSURE OF CONCENTRATED ANIMAL FEEDING
7 OPERATIONS.—The Secretary shall take such actions as
8 are necessary to compel the closure of a concentrated ani-
9 mal feeding operation if—

10 (1) an animal waste management plan for the
11 operation is not submitted for approval, and ap-
12 proved, in accordance with this Act; or

13 (2) the approval of the plan for the operation
14 has been revoked by the Secretary.

15 (b) MODIFICATION, SUSPENSION, OR REVOCATION
16 OF PLANS.—

17 (1) IN GENERAL.—The Secretary may modify,
18 suspend, or revoke, in whole or in part, the approval
19 of an approved plan for cause.

20 (2) CAUSE.—Cause for modification, suspen-
21 sion, or revocation of the approval may include—

22 (A) failure to comply with the approved
23 plan;

24 (B) a change in any condition of the con-
25 centrated animal feeding operation that re-

1 quires a change in the containment system to
2 maintain compliance with this Act; and

3 (C) failure to submit to the Secretary, on
4 request, any records and information required
5 to be maintained under this Act.

6 (c) MANDATORY REVIEW OF MANAGEMENT PRAC-
7 TICES.—If a concentrated animal feeding operation is de-
8 termined in an administrative action or proceeding of any
9 Federal or State agency to have caused significant water
10 pollution, the Secretary shall review the animal waste
11 management practices of the concentrated animal feeding
12 operation to determine if—

13 (1) the pollution resulted from failure to comply
14 with an approved plan; and

15 (2) modifications to the approved plan are re-
16 quired to prevent further pollution.

17 (d) LIABILITY FOR APPLICATIONS.—For the pur-
18 poses of this section, the application of animal waste in
19 a liquid form by any person in a manner that results in
20 significant water pollution (as determined in an adminis-
21 trative action or proceeding of any Federal or State agen-
22 cy) shall be considered to be a failure by the animal owner
23 of the concentrated animal feeding operation that pro-
24 duced the waste to comply with the animal waste manage-
25 ment plan of the operation.

1 (e) TRANSFER OF RESPONSIBILITY OR LIABILITY
 2 FROM OWNERS TO OPERATORS.—No provision of a con-
 3 tract or other agreement between an animal owner and
 4 an operator shall transfer responsibility or liability under
 5 this Act from the animal owner to the operator.

6 **SEC. 9. NONPREEMPTION.**

7 Nothing in this Act limits the authority of a State
 8 or local government to enforce stricter regulation of any
 9 aspect of a livestock or poultry feeding operation.

10 **SEC. 10. VOLUNTARY COMPLIANCE INCENTIVES UNDER EN-**
 11 **VIRONMENTAL QUALITY INCENTIVES PRO-**
 12 **GRAM.**

13 (a) HIGH PRIORITY FOR ASSISTANCE AND PAY-
 14 MENTS.—Section 1240C of the Food Security Act of 1985
 15 (16 U.S.C. 3839aa–3) is amended—

16 (1) in paragraph (2), by striking “or” at the
 17 end;

18 (2) in paragraph (3), by striking the period at
 19 the end and inserting “; or”; and

20 (3) by adding at the end the following:

21 “(4) are provided for the development and im-
 22 plementation of animal waste management plans
 23 that meet standards established under the Animal
 24 Agriculture Reform Act by livestock producers for

1 whom animal waste management plans are not re-
2 quired under that Act.”.

3 (b) APPROVED PLAN.—Section 1240E(a) of the Food
4 Security Act of 1985 (16 U.S.C. 3839aa–5(a)) is amend-
5 ed—

6 (1) by striking “To be” and inserting the fol-
7 lowing:

8 “(1) REQUIREMENT.—To be”; and

9 (2) by adding at the end the following:

10 “(2) ANIMAL WASTE MANAGEMENT PLAN.—An
11 animal waste management plan that meets the re-
12 quirements of the Animal Agriculture Reform Act,
13 but that is prepared by a livestock operator that is
14 too small to be considered a concentrated feeding op-
15 eration (as defined in section 3 of that Act), shall
16 be considered to be an approved plan of operations
17 under the environmental quality incentives pro-
18 gram.”.

19 (c) FUNDING.—Section 1241(b) of the Food Security
20 Act of 1985 (16 U.S.C. 3841(b)) is amended—

21 (1) by redesignating paragraph (2) as para-
22 graph (3); and

23 (2) by inserting after paragraph (1) the follow-
24 ing:

1 “(2) AUTHORIZATION OF APPROPRIATIONS.—In
2 addition to any amounts that are made available
3 under paragraph (1), there are authorized to be ap-
4 propriated to carry out the environmental quality in-
5 centives program \$600,000,000 for each of fiscal
6 years 1999 through 2002.”.

7 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

8 There are authorized to be appropriated such sums
9 as are necessary to carry out this Act.

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