

106TH CONGRESS
1ST SESSION

H. R. 684

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 10, 1999

Mr. GEORGE MILLER of California (for himself, Ms. KILPATRICK, Mrs. TAUSCHER, Mr. PALLONE, Mr. STARK, Ms. RIVERS, and Mr. MEEHAN) 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-

1 mal, a composted animal carcass, or other re-
2 sidual organic matter from a concentrated feed-
3 ing operation.

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

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

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

19 “(4) PERMITS.—

20 “(A) EXISTING PERMITS.—Any con-
21 centrated animal feeding operation operating on
22 the date of the enactment of this Act under a
23 permit issued under this section may continue
24 to operate under the terms of the permit until
25 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 comprehensive nutrient management
10 plan approved 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 comprehensive
20 nutrient management plan approved under
21 paragraph (5).

22 “(5) COMPREHENSIVE NUTRIENT MANAGEMENT
23 PLANS.—

24 “(A) IN GENERAL.—Not more than 2
25 years after the date of the enactment of this

1 subsection, the Administrator, in consultation
2 with the Secretary of Agriculture, shall publish
3 detailed guidance on the preparation and imple-
4 mentation of comprehensive nutrient manage-
5 ment plans for concentrated animal feeding op-
6 erations. Such guidance shall establish the re-
7 quired elements of a comprehensive nutrient
8 management plan and establish technical stand-
9 ards for each element.

10 “(B) REQUIRED ELEMENTS.—The re-
11 quired elements of a comprehensive nutrient
12 management plan for a concentrated animal
13 feeding operation shall include at least—

14 “(i) the names, addresses, and tele-
15 phone numbers of the operator of the oper-
16 ation;

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

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

1 wells, and the direction and degree of all
2 grades within the property lines of the op-
3 eration;

4 “(iv) a certification by the operator
5 that the operator will be responsible for
6 and will ensure compliance with the com-
7 prehensive nutrient management plan and
8 the requirements of this Act;

9 “(v) a certification by the operator
10 that the operator will maintain records of
11 ownership of any animals confined at the
12 operation that are not owned by the opera-
13 tor and that the operator will notify each
14 such owner of the potential joint liability of
15 the animal owner as provided under para-
16 graph (7) if the operator violates the terms
17 of the permit or the requirements of this
18 Act with respect to a discharge from the
19 operation;

20 “(vi) an estimate of the annual animal
21 production and the annual quantity of each
22 type of animal waste produced by the oper-
23 ation;

1 “(vii) the crop or vegetative cover
2 schedule for any agricultural lands owned
3 or leased by the operator;

4 “(viii) information necessary to deter-
5 mine the land area required for the appli-
6 cation of animal waste from the operation
7 as determined in accordance with the re-
8 quirements of this Act, including para-
9 graph (8), and any crop or vegetative cover
10 schedule specified in the plan;

11 “(ix) a schedule for periodic testing of
12 soil nutrient levels;

13 “(x) a schedule for periodic testing of
14 animal waste nutrient levels;

15 “(xi) information necessary to deter-
16 mine the land area available to the opera-
17 tor for application of animal waste, includ-
18 ing copies of deeds of title and written
19 agreements for use of lands not owned by
20 the operator for application of animal
21 waste;

22 “(xii) if methods of disposal for ani-
23 mal waste other than land application by
24 or on behalf of the operator will be used,
25 a description of those methods and the an-

1 nual quantity of animal waste to be dis-
2 posed of by each of these methods;

3 “(xiii) a description of the methods,
4 structures, or practices that the operator
5 will use to prevent soil loss, surface water
6 pollution and ground water pollution while
7 minimizing odors and pests caused by ani-
8 mal waste during collection, storage, and
9 application;

10 “(xiv) technical specifications for the
11 design and construction of containment
12 systems that the operator will use;

13 “(xv) a description of methods, proce-
14 dures, and practices that the operator will
15 use for—

16 “(I) operation, monitoring, main-
17 tenance, and inspection of animal
18 waste storage operations; and

19 “(II) handling, transportation,
20 application, and treatment of animal
21 waste, including storage volume,
22 schedules for emptying storage oper-
23 ations, and application schedules,
24 rates, and locations;

1 “(xvi) a description of contingency
2 measures that the operator will use to min-
3 imize environmental pollution resulting
4 from any unexpected waste leak or dis-
5 charge;

6 “(xvii) a description of practices and
7 procedures that the operator will use for
8 maintaining records detailing compliance
9 with the comprehensive nutrient manage-
10 ment plan and this Act; and

11 “(xviii) any additional requirements,
12 on a State-by-State or county-by-county
13 basis, imposed by a Federal, State, or local
14 law (including a regulation).

15 “(C) SUBMISSION OF PROPOSED PLANS.—
16 An operator of a concentrated animal feeding
17 operation who is seeking a permit under this
18 section shall develop a comprehensive nutrient
19 management plan for the operation, and submit
20 that plan to the Administrator for approval,
21 under this paragraph.

22 “(D) PLAN APPROVAL.—Within 60 days of
23 the receipt of a proposed comprehensive nutri-
24 ent management plan, the Administrator shall
25 approve or disapprove that plan. The Adminis-

1 trator shall approve a proposed plan if (i) it
2 contains the elements required under subpara-
3 graph (B), (ii) it is consistent with guidance
4 published by the Administrator under subpara-
5 graph (A), (iii) it conforms to technical stand-
6 ards published pursuant to this paragraph, and
7 (iv) the Administrator has conducted an onsite
8 inspection of the operation and determined that
9 the plan is appropriate for the operation. The
10 Administrator shall notify the applicant, in
11 writing, of the approval or disapproval of a
12 plan, including the reasons for any disapproval.

13 “(E) REVISION OF GUIDANCE AND
14 PLANS.—From time to time, but not less than
15 every 5 years, the Administrator shall revise the
16 guidance for preparation of comprehensive nu-
17 trient management plans under this paragraph
18 to incorporate improvements in monitoring, rec-
19 ordkeeping, waste handling and disposal meth-
20 ods, and other plan elements as they become
21 technologically feasible and economically achiev-
22 able. Not later than 6 months after the publica-
23 tion of revised guidance under this subpara-
24 graph, the Administrator shall not approve a
25 comprehensive nutrient management plan under

1 this paragraph unless it complies with the re-
2 vised guidance.

3 “(6) REVISION OF REGULATIONS.—

4 “(A) IN GENERAL.—Not later than 2 years
5 after the date of the enactment of this sub-
6 section, the Administrator shall revise regula-
7 tions issued to carry out this Act to ensure that
8 concentrated animal feeding operations employ
9 the best available technology economically
10 achievable, or, in the case of new or expanded
11 concentrated animal feeding operations, the
12 best available demonstrated technology nec-
13 essary to achieve no discharge of pollutants.

14 “(B) MINIMUM REQUIREMENTS.—Effluent
15 limitations for existing and new concentrated
16 animal feeding operations, standards of per-
17 formance for new concentrated animal feeding
18 operations, and pretreatment standards for new
19 and existing concentrated animal feeding oper-
20 ations revised pursuant to this paragraph shall,
21 at a minimum—

22 “(i) require, within 3 years after the
23 date of the enactment of this subsection,
24 that new containment structures and waste
25 application systems be sited and con-

1 structured to minimize the risk of discharges
2 of pollutants to the surface or ground wa-
3 ters of the United States;

4 “(ii) prohibit, within 5 years after
5 such date of enactment, the use of unlined
6 containment structures or the use of any
7 other containment structure that poses a
8 significant risk of pollution to surface or
9 ground water due to the location or con-
10 struction of such structure;

11 “(iii) eliminate, within 10 years of
12 such date of enactment, open-air lagoons
13 for the storage of animal waste;

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

16 “(v) eliminate the atmospheric deposi-
17 tion of nutrients derived from concentrated
18 animal feeding operations to waters of the
19 United States;

20 “(vi) significantly reduce the liquid
21 content of wastes; and

22 “(vii) promote technologies and pro-
23 duction practices that minimize the need
24 for large-scale storage of animal waste.

25 “(7) LIABILITY OF ANIMAL OWNERS.—

1 “(A) IN GENERAL.—If the operator of a
2 concentrated animal feeding operation is liable
3 for a civil penalty imposed under section 309
4 with respect to a violation of this Act or a per-
5 mit issued under this Act for a discharge from
6 the operation, each owner of an animal confined
7 at the operation during the period of violation
8 shall be jointly liable, subject to subparagraph
9 (B), for such penalty.

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

21 “(C) REGULATIONS.—The Administrator
22 shall issue such regulations and take such ac-
23 tions as may be necessary to implement this
24 subsection, including such regulations and ac-
25 tions as may be necessary to ensure each owner

1 of an animal confined at the operation receives
2 the same notice and opportunity for a hearing
3 with respect to imposition of any liability under
4 this paragraph as the operator of the operation
5 receives with respect to imposition of such li-
6 ability under section 309.

7 “(8) ANIMAL WASTE CONTROL.—

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

19 “(B) MAXIMUM LEVELS FOR OTHER SUB-
20 STANCES.—

21 “(i) ESTABLISHMENT.—The Adminis-
22 trator, in consultation with the Secretary
23 of Agriculture, shall establish maximum
24 permitted levels for other nutrients, min-
25 erals, metals, or other substances found in

1 animal waste whose presence in land above
2 the reasonably anticipated agronomic up-
3 take of the vegetative cover growing or to
4 be grown on the land would pose a signifi-
5 cant threat of pollution to surface or
6 ground water.

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

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

17 “(i) AERIAL SPRAYING.—The Admin-
18 istrator shall establish minimum distances
19 from residences and environmentally sen-
20 sitive locations (including distances from
21 surface water, water supply wells, wetlands
22 not used for water treatment purposes,
23 floodplains, and the drainage areas of
24 drainage wells, drainage ditches, tile drain-
25 age lines, and subsurface drainage inlets)

1 within which animal waste shall not be ap-
2 plied by aerial spraying. Any application by
3 aerial spraying within the minimum dis-
4 tances established under this subparagraph
5 shall be considered a discharge of pollut-
6 ants for purposes of this subsection.

7 “(ii) OTHER RESTRICTIONS.—The Ad-
8 ministrator may establish other restrictions
9 on aerial spraying (including a prohibition
10 on aerial spraying) that minimize the po-
11 tential of water pollution from animal
12 waste.

13 “(iii) OTHER APPLICATIONS.—The
14 application of animal waste to ice, snow,
15 frozen soil, or water saturated soil shall be
16 considered to be a discharge of pollutants
17 for purposes of this subsection.

18 “(D) CONTAINMENT OF ALL WASTE.—Any
19 containment structure for animal waste shall
20 retain all animal waste produced by the oper-
21 ation between applications, including runoff
22 that runs through or into any area or structure
23 in which animal waste is present.

1 “(E) CONTAINMENT SYSTEM FOR WET
2 WASTE OPERATIONS.—The containment system
3 for a wet waste operation shall include—

4 “(i) emergency shutoff devices that
5 are designed and placed in a manner that
6 ensures the fastest practicable containment
7 of animal waste in the event of an unex-
8 pected leakage or other discharge; and

9 “(ii) failsafe structures that will con-
10 tain, in the event that a containment struc-
11 ture breaches or overflows, a minimum
12 quantity of animal waste equal to the max-
13 imum quantity loaded into the containment
14 structure in any 48-hour period.

15 “(F) DISCONTINUATION OF USE OF ANI-
16 MAL WASTE STORAGE STRUCTURES.—An opera-
17 tor that ceases use of an animal waste storage
18 structure shall, not later than 180 days after
19 the date on which use of the structure ceases,
20 remove and dispose of all animal waste from
21 the structure in accordance with this Act.

22 “(G) APPLICATION OF ANIMAL WASTE ON
23 OTHER LAND.—Before applying animal waste
24 from a concentrated animal feeding operation
25 on land other than land owned by the animal

1 owner or operator of the operation, the animal
2 owner, and the owner of the land where the
3 waste will be applied shall execute a written
4 agreement that includes such terms and condi-
5 tions as are necessary to ensure that the waste
6 is applied in accordance with this subsection.

7 “(9) SAVINGS PROVISION.—Nothing in this sub-
8 section shall prevent the Administrator, or a State
9 in any case in which the State is administering a
10 State permit program under this section, from es-
11 tablishing more stringent requirements, including
12 the denial of permits under this section for new or
13 expanded concentrated animal feeding operations.”.

○