

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.

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## 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

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## 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:

<b>Classes of animals:</b>	<b>Specified capacity:</b>
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 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 requirements 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-

1 mal waste during collection, storage, and  
2 application;

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

6 “(xiv) a description of methods, proce-  
7 dures, and practices that the operator will  
8 use for—

9 “(I) operation, monitoring, main-  
10 tenance, and inspection of animal  
11 waste storage operations; and

12 “(II) handling, transportation,  
13 application, and treatment of animal  
14 waste, including storage volume,  
15 schedules for emptying storage oper-  
16 ations, and application schedules,  
17 rates, and locations;

18 “(xv) a description of contingency  
19 measures that the operator will use to min-  
20 imize environmental pollution resulting  
21 from any unexpected waste leak or dis-  
22 charge;

23 “(xvi) a description of practices and  
24 procedures that the operator will use for  
25 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           appropriate 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.”.

○