

BILL ANALYSIS

C.S.H.B. 3387
By: Rogers
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The dairy industry has suffered tremendously during the COVID-19 pandemic and Winter Storm Uri. At times during these events, milk shelves at grocery stores were empty despite the fact that dairy farmers continued to produce milk. Although milk bottlers and processors were required to cut back on production and employees, the dairy industry continued to produce milk because of the milking schedule of the cows. This led to bottlers and processors unable to take milk, leaving farmers with the responsibility of disposing of the milk.

Once milk leaves a farm it is considered food and travels to a bottling facility before making its way to grocery store shelves. If a milk load somehow becomes contaminated on the way, gets graded out, or is not able to be accepted by the bottler, the milk is then no longer considered viable for human consumption and is labeled as dairy waste that needs to be legally disposed. In Texas, this waste is disposed of in a disposal well, of which there are only two locations in Texas for dairy waste. The average cost to dispose a truck load of milk, about 50,000 pounds, is around \$3,000, which is a costly burden for dairy co-ops and farmers in Texas.

Land application of milk has proven to be a great fertilizer. Based on current research, milk itself can improve soil health, if applied properly. This is due to milk's ability to provide nutrients to plants and stimulate the growth of beneficial fungi by supplying sugar. Since milk is composed mostly of water, it also contributes to putting water back into the ground. Currently, other states such as Kansas, Wisconsin, and Ohio, allow for the land application of milk. It is often cheaper for Texas farmers to send their dairy waste to Kansas than it is to dispose of the waste in Texas. Farmers also feel that their product is going to be of some use as land application in Kansas rather than flushed into the ground in Texas. There are plenty of places in Texas that could benefit from the land application of milk. C.S.H.B. 3387 seeks to address these issues by providing for the authorization for certain land applications and disposal of dairy waste.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 3387 amends the Health and Safety Code to require the Texas Commission on Environmental Quality (TCEQ) to issue an authorization by rule for land application of dairy waste and to adopt rules governing the land application. The rules must do the following:

- minimize the risk of water quality impairment caused by the land application; and

- prescribe the conditions under which an authorization is issued, including the following:
 - the duration of the authorization;
 - the location of the land application unit;
 - the maximum quantity or application rate of dairy waste that may be applied or disposed of under the authorization;
 - the suggested agronomic application rate for the dairy waste or other beneficial uses of the dairy waste; and
 - best management practices for the handling and disposal of dairy waste.

C.S.H.B. 3387 amends the Water Code to require TCEQ, to the extent permitted by federal law, to adopt rules to allow the following:

- the disposal of dairy waste from a concentrated animal feeding operation into a control or retention facility, including a lagoon or playa; and
- the land application by irrigation associated with that disposal.

The rules must do the following:

- minimize the risk of water quality impairment caused by the disposal of dairy waste into the control or retention facility and by the land application by irrigation associated with the disposal; and
- require best management practices to ensure that the disposal of dairy waste into the control or retention facility does not impair water quality.

C.S.H.B. 3387 requires TCEQ, not later than March 1, 2022, to adopt rules necessary to implement the bill's provisions. The bill defines "dairy waste" as milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation or at a concentrated animal feeding operation, as applicable.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3387 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute expands the original's definitions of "dairy waste" by including milk by-products and milk processing waste and specifying that the dairy waste items may be adulterated, unmarketable, or stranded.

The substitute replaces the original's authorization for TCEQ to issue a permit, registration, or other authorization for land application of dairy waste with a requirement for TCEQ to issue an authorization by rule for such land application. The substitute revises the original's conditions that the rules must prescribe for the issuance of an authorization as follows:

- provides for the maximum application rate of dairy waste that may be applied or disposed of under an authorization to be prescribed as an alternative to the maximum quantity of that waste; and
- includes beneficial uses of the dairy waste and best management practices for the handling and disposal of dairy waste among the conditions.

The substitute provides for the disposal of dairy waste from a concentrated animal feeding operation into a control or retention facility, whereas the original provided for the discharge of that waste from the operation into the facility. The substitute includes a provision that did not appear in the original requiring the TCEQ rules to allow the land application by irrigation associated with that disposal. The substitute requires the rules to require best management

practices to ensure that the disposal does not impair water quality, whereas the original required the rules to require monitoring to ensure that the discharge does not impair water quality.