
SUBSTITUTE SENATE BILL 6161

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators Swecker, Newhouse, Rasmussen and Anderson)

Read first time 1/23/98.

1 AN ACT Relating to dairy nutrient management; amending RCW
2 90.64.010, 90.64.030, 90.64.050, 90.64.060, 90.64.070, 90.64.080,
3 90.64.120, and 43.21B.300; adding new sections to chapter 90.64 RCW;
4 adding a new section to chapter 15.44 RCW; creating a new section; and
5 repealing RCW 90.64.005 and 90.64.090.

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

7 NEW SECTION. **Sec. 1.** INTENT. It is the intent of this chapter to
8 establish a credible registration and inspection program for dairy
9 animal feeding operations to address the excessive discharge of
10 nutrients or pollutants to waters of the state and lead to compliance
11 by the industry with water quality laws. Furthermore, it is the
12 objective of this chapter to maintain the administration of the water
13 quality program as it relates to dairy operations at the state level.

14 It is the purpose of this chapter to create a balanced program
15 involving technical assistance, regulation, and enforcement with
16 coordination and oversight of the program by an advisory committee
17 composed of agency, industry, and other representatives. Additionally,
18 the legislature intends to clarify the current coordination procedures

1 and responsibilities between the department, the conservation
2 commission, and conservation districts.

3 NEW SECTION. **Sec. 2.** REGISTRATION. (1) Each year the department
4 shall obtain from the food safety and animal health division of the
5 department of agriculture a current list of all grade A licensed dairy
6 farms in the state.

7 (2) By July 15th of each year, the department shall mail to each
8 dairy animal feeding operation a facility registration form. The form
9 shall require the following information:

10 (a) The name and address of the operator;

11 (b) The name and address of the facility;

12 (c) The telephone number;

13 (d) The number of cows;

14 (e) The number of young stock; and

15 (f) The number of acres owned and rented in the operation.

16 (3) The facility registration form shall also provide four options
17 for dairy animal feeding operations to register with the department
18 demonstrating how compliance with state and federal water quality laws,
19 rules, and regulations will be achieved:

20 (a) That the dairy animal feeding operation holds a current
21 national pollution discharge elimination system permit;

22 (b) That the dairy animal feeding operation has a fully implemented
23 dairy nutrient management plan that conforms with technical standards
24 and specifications of the natural resources conservation service. When
25 registering, dairy animal feeding operations selecting a registration
26 option under this subsection shall provide certification by the
27 conservation district or registered professional engineer that the
28 nutrient management plan is current for the existing herd size and all
29 facilities needed to implement the plan have been fully constructed.
30 Plans shall be submitted to the conservation district by August 1st.
31 Decisions by conservation districts on whether to provide certification
32 under this subsection shall be made by August 20th. The owner or
33 operator of the dairy animal feeding operation shall also certify the
34 dairy nutrient management plan is being fully implemented;

35 (c) That the dairy animal feeding operation will develop and fully
36 implement by September 1, 1999, a dairy nutrient management plan based
37 on best management practices that will eliminate the discharge of
38 pollutants to waters of the state. The list of best management

1 practices contained in the natural resource conservation service
2 technical manuals and additional alternative best management practices
3 developed in accordance with section 14 of this act may be used by the
4 producer in preparation of the plan; or

5 (d) That the dairy animal feeding operation has entered into a
6 contract for at least the ensuing one-year period to conduct water
7 quality sampling of waters adjacent to the operation and lands that
8 have received applications of dairy waste nutrients that meets the
9 requirements established in section 4 of this act. A copy of the
10 signed contract shall be submitted to the department. The dairy animal
11 feeding operation shall maintain records for tracking nutrient
12 management, which shall be provided upon request of the department.

13 (4) Failure of a dairy animal feeding operation to register with
14 the department by September 1st as required by this section places the
15 dairy animal feeding operation in the unregistered status category.

16 NEW SECTION. **Sec. 3.** INSPECTIONS. (1) All dairy animal feeding
17 operations are subject to inspections by the department in accordance
18 with this section. The purpose of the inspection is to determine
19 compliance with this chapter, chapter 90.48 RCW, and all other
20 applicable state and federal water quality laws, rules, and
21 regulations.

22 (2) The department should inspect all dairy animal feeding
23 operations a minimum of once every twenty-four months.

24 (3) Those dairy animal feeding operations fully implementing an
25 animal waste management plan meeting federal natural resources
26 conservation service technical standards and specifications shall be
27 inspected at a reduced frequency.

28 (4) The department shall strive to inspect dairy animal feeding
29 operations in the unregistered category within the first six months
30 following closure of the registration period.

31 (5) The following categories of farms are the highest priority for
32 inspection by the department:

33 (a) Farms in the unregistered category under this chapter;

34 (b) Farms that have chosen to conduct water quality monitoring and
35 for which the monitoring results either show a violation of state
36 surface water quality standards under chapter 173-201A WAC, or farms
37 that have chosen this monitoring registration option and do not fulfill
38 all of the requirements of section 4 of this act;

1 (c) All farms in those watersheds where the department has
2 determined dairy farms are a likely source of water quality
3 degradation;

4 (d) Farms registered under section 2(3)(c) of this act; and

5 (e) Farms for which the department receives an oral or written
6 water pollution complaint.

7 (6) Those dairy animal feeding operations covered under a state or
8 the national pollution discharge elimination system waste discharge
9 permit shall be inspected as determined necessary by the department to
10 achieve and maintain compliance with permit requirements.

11 (7) Notwithstanding any requirement under chapter 34.05 RCW, the
12 department is not required to adopt rules to implement this section.

13 NEW SECTION. **Sec. 4. SAMPLING AND FREQUENCY CRITERIA.** (1) Any
14 dairy animal feeding operation that selects the water quality
15 monitoring option as provided in subsection (3) of this section shall
16 design and conduct the monitoring program in accordance with the
17 requirements in this section.

18 (2) A scaled map shall be provided with the first monitoring report
19 of each registration period showing the location of:

20 (a) All major farm and waste management structures;

21 (b) All waters of the state on and immediately adjacent to the
22 farm;

23 (c) The monitoring stations;

24 (d) Fields where manure and processed wastewater are normally
25 applied; and

26 (e) Any other pertinent features.

27 (3) At a minimum, the farm monitoring programs shall include the
28 following elements:

29 (a) Sampling shall be conducted once each month in the first week
30 of November, January, and March. Sampling may be postponed by one
31 month if the sampling location is physically inaccessible due to
32 streamflow conditions. If sampling is postponed, written notice of the
33 postponement shall be provided to the department by the end of that
34 particular sampling month;

35 (b) A minimum of one station immediately upstream of the farm and
36 one station immediately downstream of the farm;

37 (c) One sample for fecal coliform bacteria shall be collected at
38 each station during each sampling event;

1 (d) The streamflow at each station at the time of sampling shall be
2 estimated or measured;

3 (e) The classification of the waters being sampled under the state
4 surface water quality standards, chapter 173-201A WAC, shall be
5 identified; and

6 (f) Any notes, observations, or photographs that may be relevant.

7 (4) Sampling stations shall be located in those surface waters of
8 the state that are in closest proximity to the waste storage pond and
9 fields normally receiving applications of animal waste. Surface waters
10 of the state include lakes, rivers, ponds, streams, saltwater, and
11 drainage ditches.

12 (5) A quality assurance-quality control plan shall also be
13 submitted with the initial monitoring report each registration period
14 for the monitoring to be conducted. A laboratory accredited by the
15 department shall conduct all laboratory analyses. The department shall
16 consult with the dairy nutrient management program compliance review
17 committee to finalize a model quality assurance-quality control plan by
18 July 15, 1998.

19 (6) All dairy animal feeding operations exercising the monitoring
20 option in this section shall also maintain records for tracking
21 nutrients applied to the operator's fields. The records shall be
22 provided in a timely manner to the department upon request.

23 (7) All monitoring results in this section shall be provided by the
24 contracting firm to the dairy animal feeding operation and the
25 department of ecology not later than the end of each sampling month.
26 All monitoring results shall be provided on a standard monitoring
27 reporting form provided to all dairy animal feeding operations by the
28 department with the initial mailing of the registration form. The
29 standard monitoring reporting form shall be developed in consultation
30 with the dairy nutrient management program compliance review committee.

31 NEW SECTION. **Sec. 5.** FARM PLAN IMPLEMENTATION. Dairy animal
32 feeding operations that register under section 2(3)(c) of this act
33 shall file an initial registration form on or before September 1, 1998.
34 Dairy animal feeding operations shall indicate current best management
35 practices currently in use and that the operation intends to implement
36 an alternative farm plan that addresses storage and use of nutrients.
37 To do this, producers may choose to include best management practices
38 contained in the natural resource conservation service technical

1 manuals or additional best management practices developed by the dairy
2 nutrient management program compliance review committee formed by the
3 department. The dairy animal feeding operation shall have practices in
4 the alternative farm plan implemented by September 1, 1999. The
5 department should conduct a formal inspection done of the facility
6 within the ensuing seven months. The purpose of the inspection is for
7 the department to identify whether the plan appears to be effective in
8 complying with state and federal water quality laws.

9 **Sec. 6.** RCW 90.64.010 and 1993 c 221 s 2 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

13 (1) "Catastrophic" means a tornado, hurricane, earthquake, or other
14 extreme condition that would cause an overflow from a required waste
15 retention structure.

16 (2) "Chronic" means a series of wet weather events that precludes
17 dewatering of a waste retention structure that is designed and
18 constructed with adequate volume for the current herd size and is also
19 properly maintained.

20 (3) "Conservation commission" or "commission" means the
21 conservation commission under chapter 89.08 RCW.

22 ~~((+2))~~ (4) "Conservation districts" or "district" means a
23 subdivision of state government organized under chapter 89.08 RCW.

24 ~~((+3))~~ (5) "Concentrated dairy animal feeding operation" means a
25 dairy animal feeding operation subject to regulation under this chapter
26 which the director designates under RCW 90.64.030 or meets the
27 following criteria:

28 (a) Has more than seven hundred mature dairy cows, whether milked
29 or dry cows, that are confined; or

30 (b) Has more than two hundred head of mature dairy cattle, whether
31 milked or dry cows, that are confined and either:

32 (i) From which pollutants are discharged into navigable waters
33 through a manmade ditch, flushing system, or other similar manmade
34 device; or

35 (ii) From which pollutants are discharged directly into surface or
36 ground waters of the state that originate outside of and pass over,
37 across, or through the facility or otherwise come into direct contact
38 with the animals confined in the operation.

1 ~~((4))~~ No dairy animal feeding operation as defined under this
2 subsection or designated under RCW 90.64.020(1) may be classified as a
3 concentrated dairy animal feeding operation if it only discharges to
4 surface waters of the state during a twenty-five-year, twenty-four-hour
5 or larger rainfall event.

6 (6) "Dairy animal feeding operation," "farm," or "dairy farm" means
7 a lot or facility where the following conditions are met:

8 (a) Dairy animals that have been, are, or will be stabled or
9 confined and fed for a total of forty-five days or more in any twelve-
10 month period; and

11 (b) Crops, vegetation forage growth, or postharvest residues are
12 not sustained in the normal growing season over any portion of the lot
13 or facility. Two or more dairy animal feeding operations under common
14 ownership are considered, for the purposes of this chapter, to be a
15 single dairy animal feeding operation if they adjoin each other or if
16 they use a common area for land application of wastes.

17 ~~((5))~~ (7) "Department" means the department of ecology under
18 chapter 43.21A RCW.

19 ~~((6))~~ (8) "Director" means the director of the department of
20 ecology, or his or her designee.

21 **Sec. 7.** RCW 90.64.030 and 1993 c 221 s 4 are each amended to read
22 as follows:

23 ~~((Upon receiving a complaint or upon its own determination that a~~
24 ~~dairy animal feeding operation is a likely source of water quality~~
25 ~~degradation,))~~ (1) The department may investigate a dairy animal
26 feeding operation to determine whether the operation is discharging
27 directly pollutants or recently has discharged directly pollutants into
28 surface or ground waters of the state under the program established in
29 section 3 of this act. The department shall investigate a written
30 complaint filed with the department within ten days and shall make a
31 written report of its findings including the results of any water
32 quality measurements, photographs, or other pertinent information. A
33 copy of the findings shall be provided upon request to the dairy animal
34 feeding operation.

35 (2) Those dairy animal feeding operations that are determined to be
36 either a concentrated dairy animal feeding operation under RCW
37 90.64.010(5) or a significant contributor of pollution based on actual
38 water quality tests, photographs, or other pertinent information if

1 immediate corrective actions are not possible, shall be designated as
2 a concentrated dairy animal feeding operation and shall be (~~subject to~~
3 ~~the provisions of this chapter~~) required to obtain a national
4 pollution discharge elimination system permit if required by federal
5 law. Coverage by such permit shall be maintained until the operation
6 has been shown to be in compliance with permit conditions for three
7 consecutive years. Additionally, those operations that are determined
8 to be in violation of water quality laws are subject to the enforcement
9 provisions of chapters 43.05 and 90.48 RCW, including civil penalties
10 levied under RCW 90.48.144.

11 (3) A discharge to surface waters of the state shall not be
12 considered a violation of chapter 90.48 RCW if at the time of discharge
13 all of the following conditions are met:

14 (a) The farm has a current national pollution discharge elimination
15 system permit;

16 (b) The discharge is due to chronic or catastrophic events;

17 (c) The farm has a wastewater management system designed,
18 constructed, and operated to contain all process-generated wastewater
19 plus average annual precipitation minus evaporation plus the runoff
20 from a twenty-five-year, twenty-four-hour rainfall event for that
21 location.

22 (4) The department shall publicize all enforcement actions,
23 including minor first offenses, through the issuance of press releases.

24 **Sec. 8.** RCW 90.64.050 and 1993 c 221 s 6 are each amended to read
25 as follows:

26 (1) The department has the following duties:

27 (a) Identify existing or potential water quality problems resulting
28 from dairy (~~farms~~) animal feeding operations through implementation
29 of the registration and inspection programs in sections 2, 3, and 4 of
30 this act;

31 (b) Receive, process, and verify complaints concerning discharge of
32 pollutants from all dairy (~~farms~~) animal feeding operations
33 regardless of size;

34 (c) Determine if a dairy-related water quality problem requires
35 immediate corrective action under the Washington state water pollution
36 control laws, chapter 90.48 RCW, the Washington state water quality
37 standards adopted under chapter 90.48 RCW, or other authorities. The
38 department shall maintain the lead enforcement responsibility;

1 (d) Administer and enforce national pollutants discharge
2 elimination system permits for operators of concentrated dairy animal
3 feeding operations, where required by federal regulations, and
4 administer state laws;

5 (~~Appoint representatives, including dairy industry~~
6 ~~representatives, to participate in the compliance review committee that~~
7 ~~will annually review and update policy and disseminate information as~~
8 ~~needed~~) Chair and appoint department representatives to the dairy
9 nutrient management program compliance review committee;

10 (f) Encourage communication and cooperation between local
11 department personnel and the appropriate conservation district
12 personnel;

13 (g) Encourage the use of federal (~~soil~~) natural resource
14 conservation service standards and specifications and the development
15 of new technologies and ideas that can be used in designing best
16 management practices for dairy ((waste)) nutrient management plans to
17 protect water quality;

18 (h) Provide to the commission (~~an annual~~) and dairy nutrient
19 management program compliance review committee a semiannual report of
20 dairy ((waste-pollution)) nutrient registration, inspection,
21 permitting, and enforcement activities.

22 (2) The department may not delegate its responsibilities in
23 enforcement.

24 **Sec. 9.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read
25 as follows:

26 (~~(1)~~) If the department determines that the operator of a dairy
27 animal feeding operation has the means to correct a water quality
28 problem in a manner that will prevent future contamination and does so
29 promptly and such correction is maintained, the department shall cease
30 pursuit of the complaint.

31 (~~(2)~~ If the department determines that an unresolved water quality
32 problem from a dairy animal feeding operation requires immediate
33 corrective action, the department shall notify the operator and the
34 district in which the problem is located.

35 (3) If immediate action is not necessary by the department, the
36 handling of complaints will differ depending on the amount of
37 information available and the compliance option selected by the
38 conservation district involved.

1 ~~(a) When the name and address of the party against whom the~~
2 ~~complaint was registered are known:~~

3 ~~(i) Districts operating at levels 1 and 2 will receive a copy of~~
4 ~~complaint information, and compliance letter if one was sent out.~~

5 ~~(ii) Districts operating at levels 3 and 4 will receive a copy of~~
6 ~~complaint information and the letter sent by the department to the~~
7 ~~operator informing the operator of the complaint and providing the~~
8 ~~operator with the opportunity to work with the conservation district on~~
9 ~~a voluntary basis.~~

10 ~~(b) The department and the conservation district will work together~~
11 ~~at the local level to resolve complaints when the name and address of~~
12 ~~the party against whom the complaint was registered are unknown.))~~

13 **Sec. 10.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read
14 as follows:

15 (1) The conservation district has the following duties:

16 (a) Adopt and annually update the water quality section in the
17 conservation district dairy ~~((waste))~~ nutrient management plan;

18 (b) As part of the district annual report, include a water quality
19 progress report on dairy ~~((waste))~~ nutrient management activities
20 conducted that are related to this chapter; and

21 (c) Encourage communication and cooperation between the
22 conservation district personnel and local department personnel((;

23 ~~(d) Adopt and carry out a compliance option from level 1, level 2,~~
24 ~~level 3, or level 4)).~~

25 (2) The district's capability to carry out its responsibilities
26 ~~((in the four levels of compliance))~~ is contingent upon the
27 availability of funding and resources to implement a dairy ~~((waste))~~
28 nutrient management program.

29 **Sec. 11.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read
30 as follows:

31 (1) The conservation commission has the following duties:

32 (a) Forward to the department the dairy ~~((waste))~~ nutrient
33 management plan progress reports prepared under RCW 90.64.070(1)(b);

34 (b) Provide assistance as may be appropriate to the conservation
35 districts in the discharge of their responsibilities as management
36 agencies in dairy ~~((waste))~~ nutrient management program implementation;

1 (c) Provide coordination for conservation district programs at the
2 state level through special arrangements with appropriate federal and
3 state agencies;

4 (d) Inform conservation districts of activities and experiences of
5 other conservation districts relative to agricultural water quality
6 protection, and facilitate an interchange of advice, experience, and
7 cooperation between the districts;

8 (e) Encourage communication between the conservation district
9 personnel and local department personnel;

10 (f) Appoint conservation district representatives to serve on the
11 dairy nutrient management program compliance review committee with
12 advice of the Washington association of conservation districts;

13 (g) Appoint a commission representative to cochair and participate
14 on the dairy nutrient management program compliance review committee
15 (~~that will annually review and update policy and disseminate~~
16 ~~information as needed~~);

17 (h) Work with the department to provide communication outreach to
18 representatives of agricultural and environmental organizations to
19 receive feedback on implementation of this chapter.

20 (2) The commission's capability to carry out its responsibilities
21 under this chapter is contingent upon the availability of funding and
22 resources to implement a dairy ((waste)) nutrient management program.

23 **Sec. 12.** RCW 90.64.120 and 1993 c 221 s 13 are each amended to
24 read as follows:

25 Nothing in this chapter shall affect the department's authority or
26 responsibility to administer or enforce the national pollutant
27 discharge elimination system permits for operators of concentrated
28 dairy animal feeding operations, where required by federal regulations
29 or to administer the provisions of chapter 90.48 RCW including RCW
30 90.48.090.

31 NEW SECTION. **Sec. 13.** DATA BASE. (1) By September 30, 1998, the
32 department shall develop and maintain a data base to account for the
33 implementation of the registration and inspection programs identified
34 in sections 2, 3, and 4 of this act. The data base shall track the
35 following:

1 (a) The names of the dairy animal feeding operations that were sent
2 registration forms and the registration option chosen by each dairy
3 animal feeding operation;

4 (b) The dates that the dairy animal feeding operation was inspected
5 and the general result of the inspection;

6 (c) Whether an enforcement action was taken and the type of action
7 taken;

8 (d) A summary of any water quality data that was collected;

9 (e) The status of implementation of dairy nutrient management plans
10 for each dairy animal feeding operation;

11 (f) The number of inspections conducted by each inspector by month
12 and year; and

13 (g) The type and number of technical assistance and outreach
14 activities conducted by each inspector by month.

15 (2) A summary of the data base information shall be provided
16 semiannually to the dairy nutrient management program compliance review
17 committee members.

18 NEW SECTION. Sec. 14. NUTRIENT MANAGEMENT PLANS--GUIDELINES. (1)
19 By January 1, 1999, the conservation commission and the department
20 shall develop and distribute to conservation districts and other
21 interested and affected parties guidelines for the development of
22 nutrient management plans.

23 (2) The conservation commission and the department of ecology shall
24 form an advisory committee to assist developing these guidelines. The
25 advisory committee shall be composed of representatives from
26 associations of dairy producers, the federal environmental protection
27 agency, the federal natural resources conservation service, the
28 Washington State University cooperative extension, and local
29 conservation districts.

30 (3) The guidelines will identify those elements that should be
31 contained in dairy nutrient management plans prepared after January 1,
32 1999, to satisfy the requirements of this chapter. These guidelines
33 will include those elements and best management practices that should
34 be used when preparing a dairy nutrient management plan for the
35 following goals to be achieved:

36 (a) Clearly written plans;

37 (b) Dairy producers and others can readily understand plans;

1 (c) Plans allow for alternative best management practices, where
2 appropriate;

3 (d) Plans are of a consistent general format and content; and

4 (e) Plans consistently contain scientifically sound best management
5 practices to ensure the protection of surface and ground water quality.

6 (4) Alternative best management practices shall be developed by the
7 advisory committee established in subsection (2) of this section and
8 made available to the department by July 15th of each year.

9 NEW SECTION. **Sec. 15.** DAIRY NUTRIENT MANAGEMENT PROGRAM
10 COMPLIANCE REVIEW COMMITTEE. (1) A dairy nutrient management program
11 compliance review committee is established. The committee shall be
12 chaired by the department and the conservation commission. The purpose
13 of the committee is to provide accountable direction and oversight of
14 the dairy nutrient management registration and inspection programs.

15 (2) The committee shall be composed of representatives of the
16 department, representatives nominated from associations of dairy animal
17 feeding operations and up to five other agencies and interested parties
18 as determined by the department in consultation with representatives of
19 dairy animal feeding operations.

20 (3) The committee shall perform the following functions:

21 (a) Review the dairy animal feeding operations registration form;

22 (b) Review the environmental excellence award program that
23 recognizes dairy animal feeding operations who have shown outstanding
24 achievement in meeting water quality goals;

25 (c) Meet at least three times per calendar year;

26 (d) Disseminate information as needed;

27 (e) Maintain meeting minutes and account for the resolution of
28 issues jointly identified by the committee chairs as needing to be
29 addressed;

30 (f) Review the semiannual data base report provided by the
31 department under section 13 of this act;

32 (g) Act as a forum to hear suggestions from any interested parties,
33 including dairy farmers, regarding implementation of the dairy nutrient
34 management program;

35 (h) Monitor the development and use of the dairy animal nutrient
36 management planning guidelines adopted by the department; and

1 (i) Create and recommend standardized dairy farm nutrient
2 management facility inspection procedures and a reporting format to be
3 used by the department.

4 (4) The dairy nutrient management program compliance review
5 committee does not replace or infringe upon the authority, duties, or
6 responsibilities of the pollution control hearings board.

7 **Sec. 16.** RCW 43.21B.300 and 1993 c 387 s 23 are each amended to
8 read as follows:

9 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
10 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
11 90.56.330 shall be imposed by a notice in writing, either by certified
12 mail with return receipt requested or by personal service, to the
13 person incurring the penalty from the department(~~(, the administrator~~
14 ~~of the office of marine safety,)~~) or the local air authority,
15 describing the violation with reasonable particularity. Within fifteen
16 days after the notice is received, the person incurring the penalty may
17 apply in writing to the department(~~(, the administrator,)~~) or the
18 authority for the remission or mitigation of the penalty. Upon receipt
19 of the application, the department(~~(, the administrator,)~~) or authority
20 may remit or mitigate the penalty upon whatever terms the department(~~(,~~
21 ~~the administrator,)~~) or the authority in its discretion deems proper.
22 The department or the authority may ascertain the facts regarding all
23 such applications in such reasonable manner and under such rules as it
24 may deem proper and shall remit or mitigate the penalty only upon a
25 demonstration of extraordinary circumstances such as the presence of
26 information or factors not considered in setting the original penalty.

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

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

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

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

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

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

15 (5) All penalties recovered shall be paid into the state treasury
16 and credited to the general fund except those penalties imposed
17 pursuant to RCW 18.104.155, which shall be credited to the reclamation
18 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
19 disposition of which shall be governed by that provision, RCW
20 70.105.080, which shall be credited to the hazardous waste control and
21 elimination account, created by RCW 70.105.180, and RCW 90.56.330,
22 which shall be credited to the coastal protection fund created by RCW
23 90.48.390 and of those penalties collected from dairy animal feeding
24 operations for violations under RCW 90.48.144 ten thousand dollars
25 shall be transferred at the end of each fiscal year to the Washington
26 state dairy products commission and placed in an account established
27 solely for the purposes in section 17 of this act.

28 NEW SECTION. Sec. 17. A new section is added to chapter 15.44 RCW
29 to read as follows:

30 ENVIRONMENTAL EXCELLENCE AWARDS PROGRAM. The commission, in
31 consultation with the department of ecology, associations representing
32 dairy farmers, and other interested organizations, shall formulate and
33 administer an annual environmental excellence awards program. The
34 purpose of the program is to provide recognition in a nonmonetary form
35 to those dairy farms in the state that have instituted practices or
36 installed facilities that demonstrate exceptional natural resources
37 stewardship. The program is contingent on the availability of funds.

1 The commission may use funds in an account it establishes for the
2 development and administration of the environmental excellence awards
3 program and related activities. No appropriation is required for
4 disbursements from this account.

5 NEW SECTION. **Sec. 18.** The following acts or parts of acts are
6 each repealed:

7 (1) RCW 90.64.005 and 1993 c 221 s 1; and

8 (2) RCW 90.64.090 and 1993 c 221 s 10.

9 NEW SECTION. **Sec. 19.** CAPTIONS NOT LAW. Captions used in
10 sections 1 through 5, 13 through 15, and 17 of this act are not any
11 part of the law.

12 NEW SECTION. **Sec. 20.** Sections 1 through 5 and 13 through 15 of
13 this act are each added to chapter 90.64 RCW.

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