

SENATE BILL REPORT

SSB 6634

As Passed Senate, February 16, 2010

Title: An act relating to establishing civil penalties for failure to comply with dairy nutrient management recordkeeping requirements.

Brief Description: Establishing civil penalties for failure to comply with dairy nutrient management recordkeeping requirements.

Sponsors: Senate Committee on Agriculture & Rural Economic Development (originally sponsored by Senators Ranker, Hatfield, Morton, Haugen, Becker, Shin and Jacobsen).

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 1/28/10 [DPS].
Passed Senate: 2/16/10, 43-4.

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6634 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Ranker, Vice Chair; Schoesler, Ranking Minority Member; Becker, Haugen, Jacobsen, Morton and Shin.

Staff: Bob Lee (786-7404)

Background: In 1998 when the Dairy Nutrient Management Act was enacted, the list of violations included:

1. discharges of pollutants to waters of the state;
2. failure to register the dairy operation;
3. lack of an approved dairy nutrient management plan by July 1, 2002; and
4. lack of certification that the plan was fully implemented by December 31, 2003.

Authority to impose fines is established for each of these violations. The failure to prepare or implement a plan was subject to \$100 per month fine up to a combined total of \$5,000. Discharge of pollutants is subject to a maximum fine of \$10,000 per day. A civil penalty schedule serves as a guide to determine the amount of the fine when a discharge occurs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2009 the Legislature enacted SSB 5677. The failure to keep necessary records to show applications within acceptable agronomic rates was made a violation of the Dairy Nutrient Management Act. The purpose of this requirement was to better assure ground waters are protected from the potential of being polluted by over-application of nutrients.

After the legislation was enacted, it was determined that if no actual discharge to waters of the state could be shown, that the civil penalty authority for discharges did not apply. Thus, there was no penalty for failure to keep the required nutrient application records.

In 1995 and 1996 legislation was enacted that addressed how fines should be handled for violations that were detected on technical assistance visits conducted by regulatory agencies. Additionally, this legislation, now contained in chapter 43.05 RCW, limited the ability of enumerated state agencies, including the Department of Agriculture (DOA), to impose civil penalties without first issuing a notice of correction if there was minor impact to the environment or damage to property.

Summary of Substitute Bill: DOA may impose a civil penalty on a dairy producer up to \$5,000 for failure to comply with nutrient management record keeping requirements. The aggregate penalty is not to exceed \$5,000 in a calendar year.

In determining the amount of the civil penalty, DOA is to take into consideration the following:

1. the gravity and magnitude of the violation;
2. whether the violation is repeated or is continuous;
3. whether the violation was an unavoidable accident, negligence, or intentional;
4. the violator's efforts to correct the violation; and
5. the immediacy and extent to which the violation threatens the public health or safety, or harms the environment.

Authority is provided to DOA to establish by rule a graduated civil penalty schedule that includes the factors listed in this section.

Persons may appeal a civil penalty to the Pollution Control Hearings Board.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: None.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: It was the intent of last year's bill to not only make it a violation for failure to keep records, but to provide a civil penalty if records of nutrient applications were insufficient. There is a sequenced process which if a person refuses to keep the necessary records, that after warning letters and notices of corrections are issued, a fine can be finally levied.

Persons Testifying: PRO: Nora Mena, Department of Agriculture; Chris Cheney, Washington State Dairy Federation.