

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 6634**

61st Legislature  
2010 Regular Session

Passed by the Senate February 16, 2010  
YEAS 43 NAYS 4

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**President of the Senate**

Passed by the House February 28, 2010  
YEAS 86 NAYS 10

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6634** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 6634**

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Passed Legislature - 2010 Regular Session

**State of Washington                      61st Legislature                      2010 Regular Session**

**By** Senate Agriculture & Rural Economic Development (originally sponsored by Senators Ranker, Hatfield, Morton, Haugen, Becker, Shin, and Jacobsen)

READ FIRST TIME 01/29/10.

1            AN ACT Relating to establishing civil penalties for failure to  
2 comply with dairy nutrient management recordkeeping requirements;  
3 reenacting and amending RCW 43.21B.110, 43.21B.110, and 43.21B.300;  
4 adding a new section to chapter 90.64 RCW; prescribing penalties;  
5 providing an effective date; and providing an expiration date.

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

7            NEW SECTION.    **Sec. 1.** A new section is added to chapter 90.64 RCW  
8 to read as follows:

9            (1) Except as provided in chapter 43.05 RCW, the department of  
10 agriculture may impose a civil penalty on a dairy producer in an amount  
11 of not more than five thousand dollars for failure to comply with  
12 recordkeeping requirements in RCW 90.64.010(17)(c). The aggregate  
13 amount of the civil penalties issued under this section shall not  
14 exceed five thousand dollars in a calendar year.

15            (2) In determining the amount of the civil penalty to be levied,  
16 the department of agriculture shall take into consideration:

17            (a) The gravity and magnitude of the violation;

18            (b) Whether the violation was repeated or is continuous;

1 (c) Whether the cause of the violation was an unavoidable accident,  
2 negligence, or an intentional act;

3 (d) The violator's efforts to correct the violation; and

4 (e) The immediacy and extent to which the violation threatens the  
5 public health or safety or harms the environment.

6 (3) The department of agriculture may establish by rule a graduated  
7 civil penalty schedule that includes the factors listed in this  
8 section.

9 **Sec. 2.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and  
10 2009 c 183 s 17 are each reenacted and amended to read as follows:

11 (1) The hearings board shall only have jurisdiction to hear and  
12 decide appeals from the following decisions of the department, the  
13 director, local conservation districts, and the air pollution control  
14 boards or authorities as established pursuant to chapter 70.94 RCW, or  
15 local health departments:

16 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
17 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
18 90.56.310, (~~and~~) 90.56.330, and section 1 of this act.

19 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
20 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
21 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

22 (c) A final decision by the department or director made under  
23 chapter 183, Laws of 2009.

24 (d) Except as provided in RCW 90.03.210(2), the issuance,  
25 modification, or termination of any permit, certificate, or license by  
26 the department or any air authority in the exercise of its  
27 jurisdiction, including the issuance or termination of a waste disposal  
28 permit, the denial of an application for a waste disposal permit, the  
29 modification of the conditions or the terms of a waste disposal permit,  
30 or a decision to approve or deny an application for a solid waste  
31 permit exemption under RCW 70.95.300.

32 (e) Decisions of local health departments regarding the grant or  
33 denial of solid waste permits pursuant to chapter 70.95 RCW.

34 (f) Decisions of local health departments regarding the issuance  
35 and enforcement of permits to use or dispose of biosolids under RCW  
36 70.95J.080.

1 (g) Decisions of the department regarding waste-derived fertilizer  
2 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
3 department regarding waste-derived soil amendments under RCW 70.95.205.

4 (h) Decisions of local conservation districts related to the denial  
5 of approval or denial of certification of a dairy nutrient management  
6 plan; conditions contained in a plan; application of any dairy nutrient  
7 management practices, standards, methods, and technologies to a  
8 particular dairy farm; and failure to adhere to the plan review and  
9 approval timelines in RCW 90.64.026.

10 (i) Any other decision by the department or an air authority which  
11 pursuant to law must be decided as an adjudicative proceeding under  
12 chapter 34.05 RCW.

13 (2) The following hearings shall not be conducted by the hearings  
14 board:

15 (a) Hearings required by law to be conducted by the shorelines  
16 hearings board pursuant to chapter 90.58 RCW.

17 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
18 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

19 (c) Appeals of decisions by the department under RCW 90.03.110 and  
20 90.44.220.

21 (d) Hearings conducted by the department to adopt, modify, or  
22 repeal rules.

23 (e) Appeals of decisions by the department as provided in chapter  
24 43.21L RCW.

25 (3) Review of rules and regulations adopted by the hearings board  
26 shall be subject to review in accordance with the provisions of the  
27 administrative procedure act, chapter 34.05 RCW.

28 **Sec. 3.** RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are  
29 each reenacted and amended to read as follows:

30 (1) The hearings board shall only have jurisdiction to hear and  
31 decide appeals from the following decisions of the department, the  
32 director, local conservation districts, and the air pollution control  
33 boards or authorities as established pursuant to chapter 70.94 RCW, or  
34 local health departments:

35 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
36 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
37 90.56.310, (~~and~~) 90.56.330, and section 1 of this act.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
3 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,  
5 modification, or termination of any permit, certificate, or license by  
6 the department or any air authority in the exercise of its  
7 jurisdiction, including the issuance or termination of a waste disposal  
8 permit, the denial of an application for a waste disposal permit, the  
9 modification of the conditions or the terms of a waste disposal permit,  
10 or a decision to approve or deny an application for a solid waste  
11 permit exemption under RCW 70.95.300.

12 (d) Decisions of local health departments regarding the grant or  
13 denial of solid waste permits pursuant to chapter 70.95 RCW.

14 (e) Decisions of local health departments regarding the issuance  
15 and enforcement of permits to use or dispose of biosolids under RCW  
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived fertilizer  
18 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
19 department regarding waste-derived soil amendments under RCW 70.95.205.

20 (g) Decisions of local conservation districts related to the denial  
21 of approval or denial of certification of a dairy nutrient management  
22 plan; conditions contained in a plan; application of any dairy nutrient  
23 management practices, standards, methods, and technologies to a  
24 particular dairy farm; and failure to adhere to the plan review and  
25 approval timelines in RCW 90.64.026.

26 (h) Any other decision by the department or an air authority which  
27 pursuant to law must be decided as an adjudicative proceeding under  
28 chapter 34.05 RCW.

29 (2) The following hearings shall not be conducted by the hearings  
30 board:

31 (a) Hearings required by law to be conducted by the shorelines  
32 hearings board pursuant to chapter 90.58 RCW.

33 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
34 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

35 (c) Appeals of decisions by the department under RCW 90.03.110 and  
36 90.44.220.

37 (d) Hearings conducted by the department to adopt, modify, or  
38 repeal rules.

1 (e) Appeals of decisions by the department as provided in chapter  
2 43.21L RCW.

3 (3) Review of rules and regulations adopted by the hearings board  
4 shall be subject to review in accordance with the provisions of the  
5 administrative procedure act, chapter 34.05 RCW.

6 **Sec. 4.** RCW 43.21B.300 and 2009 c 456 s 17 and 2009 c 178 s 2 are  
7 each reenacted and amended to read as follows:

8 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
9 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270,  
10 90.48.144, 90.56.310, (~~and~~) 90.56.330, and section 1 of this act and  
11 chapter 90.76 RCW shall be imposed by a notice in writing, either by  
12 certified mail with return receipt requested or by personal service, to  
13 the person incurring the penalty from the department or the local air  
14 authority, describing the violation with reasonable particularity.  
15 Within thirty days after the notice is received, the person incurring  
16 the penalty may apply in writing to the department or the authority for  
17 the remission or mitigation of the penalty. Upon receipt of the  
18 application, the department or authority may remit or mitigate the  
19 penalty upon whatever terms the department or the authority in its  
20 discretion deems proper. The department or the authority may ascertain  
21 the facts regarding all such applications in such reasonable manner and  
22 under such rules as it may deem proper and shall remit or mitigate the  
23 penalty only upon a demonstration of extraordinary circumstances such  
24 as the presence of information or factors not considered in setting the  
25 original penalty.

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

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

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

35 (b) Thirty days after receipt of the notice of disposition on  
36 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  
4 within thirty days after it becomes due and payable, the attorney  
5 general, upon request of the department, shall bring an action in the  
6 name of the state of Washington in the superior court of Thurston  
7 county, or of any county in which the violator does business, to  
8 recover the penalty. If the amount of the penalty is not paid to the  
9 authority within thirty days after it becomes due and payable, the  
10 authority may bring an action to recover the penalty in the superior  
11 court of the county of the authority's main office or of any county in  
12 which the violator does business. In these actions, the procedures and  
13 rules of evidence shall be the same as in an ordinary civil action.

14 (5) All penalties recovered shall be paid into the state treasury  
15 and credited to the general fund except those penalties imposed  
16 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
17 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
18 disposition of which shall be governed by that provision, RCW  
19 70.105.080, which shall be credited to the hazardous waste control and  
20 elimination account created by RCW 70.105.180, RCW 90.56.330, which  
21 shall be credited to the coastal protection fund created by RCW  
22 90.48.390, and RCW 90.76.080, which shall be credited to the  
23 underground storage tank account created by RCW 90.76.100.

24 NEW SECTION. **Sec. 5.** Section 2 of this act expires June 30, 2019.

25 NEW SECTION. **Sec. 6.** Section 3 of this act takes effect June 30,  
26 2019.

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