
SENATE BILL 5849

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By Senators M. Rasmussen, Erwin, McAuliffe, Roach, Anderson, Bauer, Barr, Amondson and Loveland

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1 AN ACT Relating to the regulation of dairy animal feeding
2 operations; and adding a new chapter to Title 89 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that there is a need
5 to establish a clear and understandable process that provides for the
6 proper and effective management of dairy waste that affects the quality
7 of surface or ground waters in the state of Washington. The
8 legislature finds that there is a need for a program that will provide
9 a stable and predictable business climate upon which dairy farms may
10 base future investment decisions.

11 The legislature finds that federal regulations require a permit
12 program for dairies over seven hundred head of mature cows and, other
13 specified dairy farms that directly discharge into waters or are
14 otherwise significant contributors of pollution. The legislature finds
15 that significant work has been ongoing over a period of time and that
16 the intent of this chapter is to take the consensus that has been
17 developed and place it into statutory form.

18 It is also the intent of this chapter to recognize the existing
19 working relationships between conservation districts, the conservation

1 commission, and the department of ecology in protecting water quality
2 of the state. A further purpose of this chapter is to provide
3 statutory recognition of the coordination of the functions of
4 conservation districts, the conservation commission, and the department
5 of ecology pertaining to development of dairy waste management plans
6 for the protection of water quality.

7 NEW SECTION. **Sec. 2.** Unless the context clearly requires
8 otherwise, the definitions in this section apply throughout this
9 chapter.

10 (1) "Conservation commission" or "commission" means the
11 conservation commission under chapter 89.08 RCW.

12 (2) "Conservation districts" or "district" means a subdivision of
13 state government organized under chapter 89.08 RCW.

14 (3) "Concentrated dairy animal feeding operation" means a dairy
15 animal feeding operation subject to regulation under this chapter which
16 the director designates under section 4 of this act or meets the
17 following criteria:

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

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

22 (i) From which pollutants are discharged into navigable waters
23 through a manmade ditch, flushing system, or other similar manmade
24 device; or

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

29 (4) "Dairy animal feeding operation" means a lot or facility where
30 the following conditions are met;

31 (a) Dairy animals are confined and fed for a total of forty-five
32 days or more in any twelve-month period; and

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

1 (5) "Department" means the department of ecology under chapter
2 43.21A RCW.

3 NEW SECTION. **Sec. 3.** (1) The director of the department of
4 ecology may designate any dairy animal feeding operation as a
5 concentrated dairy animal feeding operation upon determining that it is
6 a significant contributor of pollution to the surface or ground waters
7 of the state. In making this designation the director shall consider
8 the following factors:

9 (a) The size of the animal feeding operation and the amount of
10 wastes reaching waters of the state;

11 (b) The location of the animal feeding operation relative to waters
12 of the state;

13 (c) The means of conveyance of animal wastes and process waters
14 into the waters of the state;

15 (d) The slope, vegetation, rainfall, and other factors affecting
16 the likelihood or frequency of discharge of animal wastes and process
17 waste waters into the waters of the state; and

18 (e) Other relevant factors as established by the department by
19 rule.

20 (2) A notice of intent to apply for a permit shall not be required
21 from a concentrated animal feeding operation designated under this
22 section until the director has conducted an on-site inspection of the
23 operation and determined that the operation should and could be
24 regulated under the permit program.

25 NEW SECTION. **Sec. 4.** Upon receiving a complaint or upon its own
26 determination that a concentrated dairy animal feeding operation is a
27 likely source of water quality degradation, the department may
28 investigate a concentrated dairy animal feeding operation to determine
29 whether the operation is discharging directly pollution or recently has
30 discharged directly pollution into surface or ground waters of the
31 state. The department shall investigate a written complaint filed with
32 the department within ten days and shall make a written report of its
33 findings including the results of any water quality measurements,
34 photographs, or other pertinent information. A copy of the findings
35 shall be provided upon request to the dairy animal feeding operation.

36 Those dairy animal feeding operations that are determined to be a
37 significant contributor of pollution based on actual water quality

1 tests, if immediate corrective actions are not possible, shall be
2 designated as a concentrated dairy animal feeding operation and shall
3 be subject to the provisions of this chapter.

4 NEW SECTION. **Sec. 5.** Determinations made by the department as to
5 whether a dairy animal feeding operation is discharging directly or
6 whether a dairy animal feeding operation is a significant contributor
7 of pollution to surface or ground waters of the state may be appealed
8 to the pollution control hearings board in accordance with the
9 provisions of chapter 43.21B RCW.

10 NEW SECTION. **Sec. 6.** (1) The department has the following duties:

11 (a) Identify existing or potential water quality problems resulting
12 from dairy farms;

13 (b) Receive, process, and verify complaints concerning discharge of
14 pollutants from all dairy farms regardless of size;

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

20 (d) Administer and enforce national pollution discharge elimination
21 system permits for operators of concentrated dairy animal feeding
22 operations, where required by federal regulations, and administer state
23 laws;

24 (e) Appoint representatives, including dairy industry
25 representatives, to participate in the compliance review committee that
26 will annually review and update policy and disseminate information as
27 needed;

28 (f) Encourage communication between local department personnel and
29 the appropriate conservation district personnel;

30 (g) Encourage the use of federal soil conservation service
31 standards and specifications in designing best management practices for
32 dairy waste management plans to protect water quality;

33 (h) Provide to the commission an annual report of dairy waste
34 pollution enforcement activities.

35 (2) The department may not delegate its responsibilities in
36 enforcement.

1 NEW SECTION. **Sec. 7.** (1) If the department determines that the
2 operator of a dairy animal feeding operation has the means to correct
3 a water quality problem in a manner that will prevent future
4 contamination and does so promptly, the department shall cease pursuit
5 of the complaint.

6 (2) If the department determines that an unresolved water quality
7 problem from a dairy animal feeding operation requires immediate
8 corrective action, the department shall notify the operator and the
9 district in which the problem is located.

10 (3) If immediate action is not necessary by the department, the
11 handling of complaints will differ depending on the amount of
12 information available and the compliance option selected by the
13 conservation district involved.

14 (a) When the name and address of the party against whom the
15 complaint was registered are known:

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

18 (ii) Districts operating at levels 3 and 4 will receive a copy of
19 complaint information and the letter sent by the department to the
20 operator informing the operator of the complaint and providing the
21 operator with the opportunity to work with the conservation district on
22 a voluntary basis.

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

26 NEW SECTION. **Sec. 8.** (1) The conservation district has the
27 following duties:

28 (a) Adopt and annually update the water quality section in the
29 conservation district dairy waste management plan;

30 (b) As part of the district annual report, include a water quality
31 progress report on dairy waste management activities conducted that are
32 related to this chapter;

33 (c) Encourage communication between the conservation district
34 personnel and local department personnel;

35 (d) Adopt and carry out a compliance option from level 1, level 2,
36 level 3, or level 4.

1 (2) The district's capability to carry out its responsibilities in
2 the four levels of compliance is contingent upon the availability of
3 funding and resources to implement a water quality program.

4 NEW SECTION. **Sec. 9.** (1) The conservation commission has the
5 following duties:

6 (a) Forward to the department the dairy waste management plan
7 progress reports;

8 (b) Provide assistance as may be appropriate to the conservation
9 districts in the discharge of their responsibilities as management
10 agencies in dairy waste management program implementation;

11 (c) Provide coordination for conservation district programs at the
12 state level through special arrangements with appropriate federal and
13 state agencies;

14 (d) Inform conservation districts of activities and experiences of
15 other conservation districts relative to agricultural water quality
16 protection, and facilitate an interchange of advice, experience, and
17 cooperation between the districts;

18 (e) Encourage communication between the conservation district
19 personnel and local department personnel;

20 (f) Appoint conservation district representatives to serve on the
21 compliance review committee with advice of the Washington association
22 of conservation districts;

23 (g) Appoint a commission representative to participate on the
24 compliance review committee that will annually review and update policy
25 and disseminate information as needed;

26 (h) Work with the department to provide communication outreach to
27 representatives of agricultural and environmental organizations to
28 receive feed back on implementation of this chapter.

29 (2) The commission's capability to carry out its responsibilities
30 under this chapter is contingent upon the availability of funding and
31 resources to implement a water quality program.

32 NEW SECTION. **Sec. 10.** Conservation districts shall adopt one of
33 the following compliance levels:

34 (1) Level 1 - Information/education/technical assistance.

35 The conservation district will serve as a local source of
36 information on dairy waste management plan implementation programs.
37 The conservation district will promote plans and efforts to improve

1 water quality and explain the benefits of participating in available
2 implementation plans through news releases and other media for the
3 general public; programs for schools; presentations to groups and civic
4 organizations; workshops; training sessions; or other appropriate
5 means. The conservation district will provide technical assistance
6 upon request.

7 The department will respond to complaints that involve water
8 quality problems caused by dairy animal feeding operations. The
9 department will work with the operator to bring the operation into
10 compliance with federal statutes, federal regulations, and applicable
11 state laws. If immediate action is deemed necessary, the department
12 will pursue the appropriate actions that may include enforcement
13 against the responsible parties. The department will advise the
14 operator of the information and technical assistance available through
15 the conservation district. The department will notify the conservation
16 district of the operator's need for information or technical
17 assistance.

18 (2) Level 2 - Information/education, problem assessment, and
19 handling complaints.

20 The conservation district will carry out programs described in
21 level 1. In addition, the conservation district will inventory dairy
22 waste related water quality problems defined in the water quality
23 section of its annual plan. The conservation district will prioritize
24 problems and work to apply voluntary solutions to the highest priority
25 problems within available resources utilizing information/education,
26 technical assistance, and incentives. Response to complaint - The
27 conservation district will make an appointment for an on-site contact
28 with the alleged violator within ten working days and determine if the
29 operator desires to work with the conservation district. If the
30 operator wishes conservation district assistance, within six months the
31 conservation district will develop a plan with the individual operator
32 which includes a schedule for application of best management practices.
33 The operator will have eighteen months, or by agreement, an approved
34 schedule with an alternative time period to implement the plan. If
35 hardships occur, the operator may request an extension of the
36 implementation schedule subject to concurrence of the department.

37 The conservation district in responding to complaints will report
38 progress, or the need for further department technical expertise, to
39 the individual involved and the department. A copy of the plan will be

1 made available to the department. If the district offers assistance
2 and the individual involved refuses to cooperate or ceases to work with
3 the conservation district, the district will notify the department.

4 The conservation district will refer all alleged water quality
5 violations, or individuals who wish to make a complaint to the
6 department.

7 The department will investigate and seek resolution of all
8 complaints that appear to need immediate action and refer all other
9 complaints concerning dairy animal feeding operations to the
10 appropriate conservation district. The department will keep a record
11 of those complaints. When a referral is made by a conservation
12 district, due to a continuing unresolved water quality problem, the
13 department will take appropriate action and advise the conservation
14 district of the action taken.

15 (3) Level 3 - Information/education, problem assessment, handling
16 complaints, and assisting in compliance.

17 The conservation district will carry out programs described in
18 levels 1 and 2. In addition, the conservation district will actively
19 follow up those problems and complaints deemed highest priority by the
20 conservation district within sixty days after the initial contact. The
21 complaint referral follow-up will include:

22 (a) Meet with the owner/operator;

23 (b) Make an on-site assessment of the nature and extent of the
24 problem, if so desired by the owner/operator;

25 (c) Notify the department that the owner/operator has or has not
26 requested assistance from the conservation district;

27 (d) Assist the owner/operator in the development of a dairy waste
28 management plan within six months. Implementation is to be completed
29 within eighteen months, or by agreement and approved schedule, with an
30 alternative time period to implement the plan. If hardships occur, the
31 operator may request an extension of the planning or implementation
32 schedule with concurrence of the department;

33 (e) Provide such technical assistance as is necessary and available
34 during plan implementation;

35 (f) Monitor plan implementation;

36 (g) Notify the department in the event that the owner/operator
37 either refuses to cooperate in the development of a dairy waste
38 management plan that will correct the problems identified during the

1 on-site assessment, or fails to implement the plan within the
2 designated time period;

3 (h) By June 30 of each year, submit a formal summary of progress on
4 alleged water quality violations referred to the conservation district
5 by the department.

6 The department will investigate and seek resolution of all
7 complaints that appear to need immediate action.

8 The department will pursue all activities addressed under level 2.
9 Except that on those sites where the conservation district is making
10 progress on water quality problems caused from dairy animal feeding
11 operations and is reporting the same to the department, the department
12 will hold any related enforcement actions in abeyance until the problem
13 is solved, or the operator refuses to cooperate further. The
14 department shall continue to pursue any immediate action where
15 required.

16 (4) Level 4 - Compliance.

17 The conservation district will carry out programs described in
18 levels 1 through 3. In addition, the conservation district will
19 provide information and direct support for resolving water quality
20 actions which may be filed by the department pursuant to its statutory
21 authority.

22 Information and support include the following:

23 (a) A field site tour to provide information and attempt to resolve
24 the issues;

25 (b) Provision for access to public information in a conservation
26 district's files, and if appropriate, in-house documents such as field
27 notes, photographs, and in-house memoranda. Access is subject to
28 applicable laws and regulations;

29 (c) Department interviews with appropriate conservation district
30 personnel regarding a site under enforcement;

31 (d) Assistance and attendance, if appropriate, at negotiation
32 sessions with responsible parties;

33 (e) Affidavits or testimony necessary to document the case.

34 The department will pursue all activities as addressed in level 3,
35 except where the conservation district has been involved, the
36 department will utilize the information and support offered by the
37 conservation district to resolve the matter.

1 NEW SECTION. **Sec. 11.** A party acting under this chapter is not
2 liable for another party's actions under this chapter.

3 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act shall
4 constitute a new chapter in Title 89 RCW.

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