
SUBSTITUTE HOUSE BILL 2191

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Koster, Chandler, Robertson and Honeyford)

Read first time 03/05/97.

1 AN ACT Relating to dairy waste; amending RCW 90.64.005, 90.64.010,
2 90.64.030, 90.64.050, 90.64.060, 90.64.070, and 90.64.080; adding new
3 sections to chapter 90.64 RCW; and repealing RCW 90.64.090.

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

5 **Sec. 1.** RCW 90.64.005 and 1993 c 221 s 1 are each amended to read
6 as follows:

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

14 The legislature finds that federal regulations require a permit
15 program for dairies (~~(with over seven hundred head of mature cows~~
16 ~~and, other specified dairy farms)) that directly discharge into waters
17 or are otherwise significant contributors of pollution. The
18 legislature finds that significant work has been ongoing over a period~~

1 of time and that the intent of this chapter is to take the consensus
2 that has been developed and place it into statutory form.

3 It is also the intent of this chapter to recognize the existing
4 working relationships between conservation districts, the conservation
5 commission, and the department of ecology in protecting water quality
6 of the state. A further purpose of this chapter is to provide
7 statutory recognition of the coordination of the functions of
8 conservation districts, the conservation commission, and the department
9 of ecology pertaining to development of dairy waste management plans
10 for the protection of water quality.

11 It is also the intent of this chapter to establish a credible
12 inspection and technical assistance program for dairy farms to address
13 the discharge of pollutants to surface and ground waters of the state
14 that will lead to water quality compliance by the industry. A further
15 purpose is to create a balanced program involving technical assistance,
16 regulation, and enforcement with coordination and oversight of the
17 program by a committee composed of industry, agency, and other
18 representatives. Additionally, the legislature intends to simplify
19 current complex coordination procedures between the department, the
20 conservation commission, and conservation districts.

21 **Sec. 2.** RCW 90.64.010 and 1993 c 221 s 2 are each amended to read
22 as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

25 (1) "Conservation commission" or "commission" means the
26 conservation commission under chapter 89.08 RCW.

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

29 (3) "Concentrated dairy animal feeding operation" means a dairy
30 animal feeding operation subject to regulation under this chapter which
31 the director designates under RCW 90.64.030 or meets the following
32 criteria:

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

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

1 (i) From which pollutants are discharged into navigable waters
2 through a manmade ditch, flushing system, or other similar manmade
3 device; or

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

8 (4) "Dairy animal feeding operation" means a lot or facility where
9 the following conditions are met:

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

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

19 (5) "Dairy farm" means any farm that has a grade A license under
20 chapter 15.36 RCW.

21 (6) "Dairy waste inspection team" means one or more representatives
22 of the department and a local conservation district. The department
23 has all enforcement responsibilities and the conservation district
24 shall provide technical assistance to the department and the dairy
25 farmer.

26 (7) "Department" means the department of ecology under chapter
27 43.21A RCW.

28 ((+6+)) (8) "Director" means the director of the department of
29 ecology, or his or her designee.

30 (9) "Major violation" means a discharge, into waters of the state,
31 except those caused by a twenty-four hour, twenty-five year or greater,
32 flood event.

33 NEW SECTION. Sec. 3. (1) By July 1, 1998, the dairy waste
34 inspection teams shall conduct an initial inspection program of all
35 dairy farms in the state. The purpose of the inspections is to correct
36 sources of actual discharges, to survey for evidence of discharges, and
37 to determine dairy farms subject to on-going inspections.

1 (2) The on-going dairy farm inspection program conducted by the
2 dairy waste inspection team shall be required of any dairy farm that:

3 (a) Is required to plan under section 5 of this act;

4 (b) Is the source of a complaint filed under this chapter; or

5 (c) Is the source of an actual discharge.

6 (3) A dairy farm shall be inspected a minimum of once every two
7 years. A dairy farm that is determined to be an actual source of water
8 quality degradation shall receive more frequent inspections as provided
9 under section 11(3)(h) of this act.

10 (4) A dairy farm inspected by the dairy waste inspection team that
11 is fully implementing a dairy animal waste management plan meeting the
12 standards and specifications under section 6 of this act, and is not
13 directly discharging pollutants to waters of the state, shall not be
14 scheduled for another inspection for twenty-four months unless a water
15 pollution complaint is received by the department.

16 **Sec. 4.** RCW 90.64.030 and 1993 c 221 s 4 are each amended to read
17 as follows:

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

32 ~~((Those))~~ A dairy ((animal feeding operations that are)) farm that
33 is determined to be a significant contributor of pollution based on
34 actual water quality tests, photographs, or other pertinent information
35 if immediate corrective actions are not possible, shall be ~~((designated~~
36 ~~as a concentrated dairy animal feeding operation and shall be))~~ subject
37 to the provisions of this chapter.

1 NEW SECTION. **Sec. 5.** (1) A dairy farm shall prepare a dairy
2 animal waste management plan if the farm:

3 (a) Has been documented as having a major violation under this
4 chapter; or

5 (b) Is a concentrated dairy animal feeding operation.

6 (2) A dairy farm required to plan under this section shall be
7 provided six months to develop a dairy animal waste management plan and
8 an additional eighteen months to fully implement the plan.

9 **Sec. 6.** RCW 90.64.050 and 1993 c 221 s 6 are each amended to read
10 as follows:

11 (1) The department has the following duties:

12 (a) Identify existing ~~((or potential))~~ water quality problems
13 resulting from dairy farms through implementation of the inspection
14 program in section 3 of this act;

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

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

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

26 (e) ~~((Appoint representatives, including dairy industry~~
27 ~~representatives, to participate in the compliance review committee that~~
28 ~~will annually review and update policy and disseminate information as~~
29 ~~needed))~~ Participate on the dairy waste program coordination and
30 oversight committee;

31 (f) Encourage communication and cooperation between local
32 department personnel and the appropriate conservation district
33 personnel;

34 (g) ~~((Encourage))~~ Require the use of ~~((federal soil conservation~~
35 ~~service standards and specifications in designing best management~~
36 ~~practices for))~~ dairy animal waste management plans ~~((to protect water~~
37 ~~quality))~~ for entities required to plan under this chapter. Such plans
38 shall meet the standards and specifications of:

- 1 (i) The natural resource conservation service;
2 (ii) The geographically based standards under section 12 of this
3 act; or
4 (iii) A professional engineer;
5 (h) Provide to the commission and dairy waste program coordination
6 and oversight committee an annual report of dairy waste ((pollution))
7 inspection, permitting, and enforcement activities.
8 (2) The department may not delegate its responsibilities in
9 enforcement.

10 **Sec. 7.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read
11 as follows:

12 (1) If the ((department)) dairy waste inspection team determines
13 that the operator of a dairy animal feeding operation has the means to
14 correct a water quality problem in a manner that will prevent future
15 contamination and does so promptly and such correction is maintained,
16 the department shall cease pursuit of the complaint.

17 (2) If the ((department)) dairy waste inspection team determines
18 that an unresolved water quality problem from a dairy animal feeding
19 operation requires immediate corrective action, the department shall
20 notify the operator and the district in which the problem is located.

21 ~~((3) If immediate action is not necessary by the department, the~~
22 ~~handling of complaints will differ depending on the amount of~~
23 ~~information available and the compliance option selected by the~~
24 ~~conservation district involved.~~

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

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

29 ~~(ii) Districts operating at levels 3 and 4 will receive a copy of~~
30 ~~complaint information and the letter sent by the department to the~~
31 ~~operator informing the operator of the complaint and providing the~~
32 ~~operator with the opportunity to work with the conservation district on~~
33 ~~a voluntary basis.~~

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

1 **Sec. 8.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read
2 as follows:

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

4 (a) ~~((Adopt and annually update the water quality section in the~~
5 ~~conservation district dairy waste management plan))~~ Provide technical
6 assistance to the department in identifying existing water quality
7 problems resulting from dairy farms through implementation of the
8 inspection program in section 3 of this act;

9 (b) ~~((As part of the district annual report, include a water~~
10 ~~quality progress report on dairy waste management activities conducted~~
11 ~~that are related to this chapter))~~ Immediately refer complaints
12 received from the public regarding discharge of pollutants to the
13 department;

14 (c) Encourage communication and cooperation between the
15 conservation district personnel and local department personnel; and

16 (d) ~~((Adopt and carry out a compliance option from level 1, level~~
17 ~~2, level 3, or level 4))~~ Provide technical assistance in developing and
18 implementing a dairy animal waste management farm plan.

19 (2) The district's capability to carry out its responsibilities
20 ~~((in the four levels of compliance))~~ under this chapter is contingent
21 upon the availability of funding and resources to implement a dairy
22 waste management program.

23 **Sec. 9.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read
24 as follows:

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

26 (a) ~~((Forward to the department the dairy waste management plan~~
27 ~~progress reports;~~

28 ~~(b))~~) Provide assistance as may be appropriate to the conservation
29 districts in the discharge of their responsibilities as management
30 agencies in dairy waste management program implementation;

31 ~~((c))~~) (b) Provide coordination for conservation district programs
32 at the state level through special arrangements with appropriate
33 federal and state agencies;

34 ~~((d))~~) (c) Inform conservation districts of activities and
35 experiences of other conservation districts relative to agricultural
36 water quality protection, and facilitate an interchange of advice,
37 experience, and cooperation between the districts;

1 (~~(e)~~) (d) Encourage communication between the conservation
2 district personnel and local department personnel;

3 (~~(f)~~) (e) Appoint conservation district representatives to serve
4 on the (~~(compliance review)~~) dairy waste program coordination and
5 oversight committee with advice of the Washington association of
6 conservation districts;

7 (~~(g)~~) ~~Appoint a commission representative to participate on the~~
8 ~~compliance review committee that will annually review and update policy~~
9 ~~and disseminate information as needed;~~

10 (h)) (f) Serve as chair to the dairy waste program coordination
11 and oversight committee;

12 (g) Work with the department to provide communication outreach to
13 representatives of agricultural and environmental organizations to
14 receive feedback on implementation of this chapter.

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

18 NEW SECTION. Sec. 10. By December 31, 1997, the department in
19 consultation with the dairy waste program coordination and oversight
20 committee shall develop and maintain a data base to account for the
21 implementation of the inspection program identified in section 3 of
22 this act. The data base shall track inspection, regulatory and
23 enforcement actions, and industry implementation of dairy animal waste
24 management plans. A summary of the data base information shall be
25 provided quarterly to the dairy waste program coordination and
26 oversight committee members.

27 NEW SECTION. Sec. 11. (1) A dairy waste program coordination and
28 oversight committee is established. The committee shall be chaired by
29 the conservation commission. The purpose of the committee is to
30 provide accountable direction and oversight of the dairy waste
31 inspection program. Members shall be appointed by the commission.

32 (2) The committee may include representatives of the department, a
33 dairy federation, the conservation commission, conservation districts,
34 the federal natural resources conservation service, the federal
35 environmental protection agency, an environmental organization, and the
36 shellfish industry.

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

- 1 (a) Meet at least four times per calendar year;
- 2 (b) Disseminate information as needed;
- 3 (c) Maintain meeting minutes and account for the resolution of
4 issues jointly identified by the committee chairs as needing to be
5 addressed;
- 6 (d) Review the annual data base report provided by the department
7 under section 10 of this act;
- 8 (e) Act as a forum to hear suggestions from any interested parties,
9 including dairy farmers, regarding implementation of the dairy waste
10 program;
- 11 (f) Monitor the development and use of the standards and
12 specifications developed under section 12 of this act;
- 13 (g) Create and recommend standardized dairy farm waste facility
14 inspection procedures and a reporting format to be used by the
15 department; and
- 16 (h) Develop performance-based criteria to determine the frequency
17 of inspections initiated under section 3 of this act.
- 18 (4) The dairy waste program coordination and oversight committee
19 does not replace or infringe upon the authority, duties, or
20 responsibilities of the pollution control hearings board.

21 NEW SECTION. **Sec. 12.** (1) The conservation commission shall
22 establish up to four dairy waste technical assistance teams by January
23 1, 1998. The teams shall be geographically located throughout the
24 state. Each team shall consist of one or more professional engineers
25 and local conservation district employees.

26 (2) Each team shall develop a set of standards and specifications
27 to assist dairy farmers in developing and implementing dairy animal
28 waste management plans by September 1, 1998. Standards and
29 specifications developed by a technical assistance team shall be
30 appropriate to the soils and other conditions of that geographic area.

31 NEW SECTION. **Sec. 13.** (1) The department shall provide copies of
32 all final dairy farm inspection reports and documentation of all formal
33 regulatory and enforcement actions taken by the department to the local
34 conservation district, and to the appropriate dairy farm, within
35 fourteen days.

1 (2) The local conservation district shall provide a copy of a
2 completed dairy animal waste management farm plan to the department
3 within fourteen days.

4 NEW SECTION. **Sec. 14.** The dairy waste management account is
5 created in the custody of the state treasurer. All receipts from
6 monetary penalties under RCW 90.64.050 must be deposited into the
7 account except those receipts held for two weeks under RCW 90.64.050.
8 Expenditures from the account may be used only for the commission to
9 provide grants to local conservation districts for the sole purpose of
10 assisting dairy farms to develop and fully implement dairy animal waste
11 management plans. Only the chairman of the commission or the
12 chairman's designee may authorize expenditures from the account. The
13 account is subject to allotment procedures under chapter 43.88 RCW, but
14 an appropriation is not required for expenditures.

15 NEW SECTION. **Sec. 15.** RCW 90.64.090 and 1993 c 221 s 10 are each
16 repealed.

17 NEW SECTION. **Sec. 16.** Sections 3, 5, and 10 through 14 of this
18 act are each added to chapter 90.64 RCW.

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