
HOUSE BILL 2191

State of Washington

55th Legislature

1997 Regular Session

By Representatives Koster, Chandler, Robertson and Honeyford

Read first time 02/25/97. Referred to Committee on Agriculture & Ecology.

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~~) with over seven hundred head of mature
16 cows and, other specified dairy farms that directly discharge into
17 waters 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.

23 (7) "Department" means the department of ecology under chapter
24 43.21A RCW.

25 (~~(+6+)~~) (8) "Director" means the director of the department of
26 ecology, or his or her designee.

27 (9) "Major violation" means a discharge, or an action or inaction
28 that causes an imminent threat of a discharge, into waters of the
29 state.

30 NEW SECTION. Sec. 3. (1) The dairy waste inspection team shall
31 conduct an initial inspection program of all dairy farms in the state.
32 The purpose of the inspection is to correct sources of actual or
33 imminent discharges and to determine dairy farms subject to on-going
34 inspections.

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

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

38 (b) Is the source of a complaint filed under this chapter; and

1 (c) Is the source of an actual or imminent discharge.

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

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

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

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

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

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

36 (a) Has been documented as having a major violation under this
37 chapter; or

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

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

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

7 (1) The department has the following duties:

8 (a) Identify existing or potential water quality problems resulting
9 from dairy farms through implementation of the inspection program in
10 section 3 of this act;

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

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

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

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

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

31 ~~((Encourage))~~ Require the use of ~~((federal soil conservation~~
32 ~~service standards and specifications in designing best management~~
33 ~~practices for))~~ dairy animal waste management plans to protect water
34 quality that meet the standards and specifications of:

35 (i) The natural resource conservation service;

36 (ii) The geographically based standards under section 12 of this
37 act; or

38 (iii) A professional engineer;

1 (h) Provide to the commission and dairy waste program coordination
2 and oversight committee an annual report of dairy waste ((pollution))
3 inspection, permitting, and enforcement activities.

4 (2) The department may not delegate its responsibilities in
5 enforcement.

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

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

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

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

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

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

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

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

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

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

36 (a) ~~((Adopt and annually update the water quality section in the~~
37 ~~conservation district dairy waste management plan)) Provide technical~~

1 assistance to the department in identifying existing or potential water
2 quality problems resulting from dairy farms through implementation of
3 the inspection program in section 3 of this act;

4 ~~(b) ((As part of the district annual report, include a water~~
5 ~~quality progress report on dairy waste management activities conducted~~
6 ~~that are related to this chapter))~~ Immediately forward complaints
7 received by the public regarding discharge of pollutants to the
8 department;

9 (c) Encourage communication and cooperation between the
10 conservation district personnel and local department personnel; and

11 ~~(d) ((Adopt and carry out a compliance option from level 1, level~~
12 ~~2, level 3, or level 4))~~ Provide technical assistance in developing and
13 implementing a dairy waste management farm plan.

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

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

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

21 ~~(a) ((Forward to the department the dairy waste management plan~~
22 ~~progress reports;~~

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

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

29 ~~((d))~~ (c) Inform conservation districts of activities and
30 experiences of other conservation districts relative to agricultural
31 water quality protection, and facilitate an interchange of advice,
32 experience, and cooperation between the districts;

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

35 ~~((f))~~ (e) Appoint conservation district representatives to serve
36 on the ~~((compliance review))~~ dairy waste program coordination and
37 oversight committee with advice of the Washington association of
38 conservation districts;

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

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

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

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

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

21 NEW SECTION. Sec. 11. (1) A dairy waste program coordination and
22 oversight committee is established. The committee shall be chaired by
23 the conservation commission. The purpose of the committee is to
24 provide accountable direction and oversight of the dairy waste
25 inspection program. Members shall be appointed by the commission.

26 (2) The committee may include representatives of the department, a
27 dairy federation, the conservation commission, conservation districts,
28 the federal natural resources conservation service, the federal
29 environmental protection agency, an environmental organization, and the
30 shellfish industry.

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

32 (a) Meet at least four times per calendar year;

33 (b) Disseminate information as needed;

34 (c) Maintain meeting minutes and account for the resolution of
35 issues jointly identified by the committee chairs as needing to be
36 addressed;

1 (d) Review the annual data base report provided by the department
2 under section 10 of this act;

3 (e) Act as a forum to hear suggestions from any interested parties,
4 including dairy farmers, regarding implementation of the dairy waste
5 program;

6 (f) Monitor the development and use of the standards and
7 specifications developed under section 12 of this act;

8 (g) Create and recommend standardized dairy farm waste facility
9 inspection procedures and a reporting format to be used by the
10 department; and

11 (h) Develop performance-based criteria to determine the frequency
12 of inspections initiated under section 3 of this act.

13 (4) The dairy waste program coordination and oversight committee
14 does not replace or infringe upon the authority, duties, or
15 responsibilities of the pollution control hearings board.

16 NEW SECTION. **Sec. 12.** (1) The conservation commission shall
17 establish up to four dairy waste technical assistance teams by January
18 1, 1998. The teams shall be geographically located throughout the
19 state. Each team shall consist of one or more professional engineers
20 and local conservation district employees.

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

26 NEW SECTION. **Sec. 13.** (1) The department shall provide copies of
27 all final dairy farm inspection reports and documentation of all formal
28 regulatory and enforcement actions taken by the department to the local
29 conservation district, and to the appropriate dairy farm, within
30 fourteen days.

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

34 NEW SECTION. **Sec. 14.** (1) The following penalty schedule is
35 established for major violations of this chapter:

1 (a) The first major violation shall result in a monetary penalty
2 equal to half the value of the milk produced on the dairy farm in
3 forty-eight hours. The monetary penalty shall be returned to the dairy
4 producer if the violation is corrected within two weeks of department
5 notification;

6 (b) The second major violation shall result in a monetary penalty
7 equal to the full value of milk produced on the dairy farm in forty-
8 eight hours. The monetary penalty shall be deposited into the dairy
9 waste management account created in section 15 of this act; and

10 (c) The third, and any subsequent, major violation shall result in
11 a monetary penalty equal to the full value of milk produced on the
12 dairy farm in six days or until full compliance is achieved, whichever
13 is greater.

14 The value of milk shall be calculated as provided in RCW 15.36.441(1).

15 (2) A dairy farm that has not had a violation in twenty-four months
16 shall be considered as not having incurred a major violation under this
17 chapter.

18 (3) The dairy waste inspection team shall reinspect a dairy farm
19 that has incurred a major violation under this chapter within twenty-
20 four hours of receiving notification that the violation has been
21 corrected.

22 NEW SECTION. **Sec. 15.** The dairy waste management account is
23 created in the custody of the state treasurer. All receipts from
24 monetary penalties under section 14 of this act must be deposited into
25 the account except those receipts held for two weeks under section
26 14(1) of this act. Expenditures from the account may be used only for
27 the commission to provide grants to local conservation districts for
28 the sole purpose of assisting dairy farms to develop and fully
29 implement dairy animal waste management plans. Only the chairman of
30 the commission or the chairman's designee may authorize expenditures
31 from the account. The account is subject to allotment procedures under
32 chapter 43.88 RCW, but an appropriation is not required for
33 expenditures.

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

1 NEW SECTION. **Sec. 17.** Sections 3, 5, and 10 through 15 of this
2 act are each added to chapter 90.64 RCW.

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