

2 **SSB 6161** - H COMM AMD **NOT ADOPTED**
3 By Committee on Agriculture & Ecology

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 90.64.005 and 1993 c 221 s 1 are each amended to read
8 as follows:

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

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

23 It is also the intent of this chapter to establish an inspection
24 and technical assistance program for dairy farms to address the
25 discharge of pollution to surface and ground waters of the state that
26 will lead to water quality compliance by the industry. A further
27 purpose is to create a balanced program involving technical assistance,
28 regulation, and enforcement with coordination and oversight of the
29 program by a committee composed of industry, agency, and other
30 representatives. Furthermore, it is the objective of this chapter to
31 maintain the administration of the water quality program as it relates
32 to dairy operations at the state level.

33 It is also the intent of this chapter to recognize the existing
34 working relationships between conservation districts, the conservation
35 commission, and the department of ecology in protecting water quality
36 of the state. A further purpose of this chapter is to provide

1 statutory recognition of the coordination of the functions of
2 conservation districts, the conservation commission, and the department
3 of ecology pertaining to development of dairy waste management plans
4 for the protection of water quality.

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

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Advisory and oversight committee" means a balanced committee
10 of agency, dairy farm, and interest group representatives convened to
11 provide oversight and direction to the dairy nutrient management
12 program.

13 (2) "Bypass" means the intentional diversion of waste streams from
14 any portion of a treatment facility.

15 (3) "Catastrophic" means a tornado, hurricane, earthquake, flood,
16 or other extreme condition that causes an overflow from a required
17 waste retention structure.

18 (4) "Certification" means:

19 (a) The acknowledgment by a local conservation district that a
20 dairy producer has constructed or otherwise put in place the elements
21 necessary to implement his or her dairy nutrient management plan; and

22 (b) The acknowledgment by a dairy producer that he or she is
23 managing dairy nutrients as specified in his or her approved dairy
24 nutrient management plan.

25 (5) "Chronic" means a series of wet weather events that precludes
26 the proper operation of a dairy nutrient management system that is
27 designed for the current herd size.

28 (6) "Conservation commission" or "commission" means the
29 conservation commission under chapter 89.08 RCW.

30 ~~((2))~~ (7) "Conservation districts" or "district" means a
31 subdivision of state government organized under chapter 89.08 RCW.

32 ~~((3))~~ (8) "Concentrated dairy animal feeding operation" means a
33 dairy animal feeding operation subject to regulation under this chapter
34 which the director designates under RCW ~~((90.64.030))~~ 90.64.020 or
35 meets the following criteria:

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

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

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

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

10 ~~((4))~~ (9) "Dairy animal feeding operation" means a lot or
11 facility where the following conditions are met:

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

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

21 ~~((5))~~ (10) "Dairy farm" means any farm that is licensed to
22 produce milk under chapter 15.36 RCW.

23 (11) "Dairy nutrient" means any organic waste produced by dairy
24 cows or a dairy farm operation.

25 (12) "Dairy nutrient management plan" means a plan meeting the
26 requirements established under section 6 of this act.

27 (13) "Dairy nutrient management technical assistance team" means
28 one or more professional engineers and local conservation district
29 employees convened to serve one of up to four distinct geographic areas
30 in the state.

31 (14) "Dairy producer" means a person who owns or operates a dairy
32 farm.

33 (15) "Department" means the department of ecology under chapter
34 43.21A RCW.

35 ~~((6))~~ (16) "Director" means the director of the department of
36 ecology, or his or her designee.

37 (17) "Upset" means an exceptional incident in which there is an
38 unintentional and temporary noncompliance with technology-based permit
39 effluent limitations because of factors beyond the reasonable control

1 of the dairy. An upset does not include noncompliance to the extent
2 caused by operational error, improperly designed treatment facilities,
3 inadequate treatment facilities, lack of preventive maintenance, or
4 careless or improper operation.

5 (18) "Violation" means the following acts or omissions:

6 (a) A discharge of pollutants into the waters of the state, except
7 those discharges that occur when:

8 (i) A dairy producer has a current national pollutant discharge
9 elimination system permit with a wastewater system designed, operated,
10 and maintained for the current herd size and that contains all process-
11 generated wastewater plus average annual precipitation minus
12 evaporation plus contaminated storm water runoff from a twenty-five
13 year, twenty-four hour rainfall event for that specific location, and
14 the discharge is due to a chronic or catastrophic event, or to an upset
15 as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40
16 C.F.R. Sec. 122.41; or

17 (ii) The dairy producer has complied with the national pollutant
18 discharge elimination system permit conditions or all of the elements,
19 including appropriate land application practices, of a dairy nutrient
20 management plan that prevents the discharge of pollutants to waters of
21 the state, that is commensurate with the dairy producer's current herd
22 size, and that is approved under section 6 of this act;

23 (b) Failure to register as required under section 3 of this act; or

24 (c) The lack of an approved dairy nutrient management plan by July
25 1, 2002; or

26 (d) The lack of a certified dairy nutrient management plan for a
27 dairy farm after December 31, 2003.

28 NEW SECTION. Sec. 3. (1) Every dairy producer licensed under
29 chapter 15.36 RCW shall register with the department by September 1,
30 1998, and shall reregister with the department by September 1st of
31 every even-numbered year. Every dairy producer licensed after
32 September 1, 1998, shall register with the department within sixty days
33 of licensing. The purpose of registration is to provide and update
34 baseline information for the dairy nutrient management program.

35 (2) To facilitate registration, the department shall obtain from
36 the food safety and animal health division of the department of
37 agriculture a current list of all licensed dairy producers in the state

1 and mail a registration form to each licensed dairy producer no later
2 than July 15, 1998.

3 (3) At a minimum, the form shall require the following information
4 as of the date the form is completed:

5 (a) The name and address of the operator of the dairy farm;

6 (b) The name and address of the dairy farm;

7 (c) The telephone number of the dairy farm;

8 (d) The number of cows in the dairy farm;

9 (e) The number of young stock in the dairy farm;

10 (f) The number of acres owned and rented in the dairy farm;

11 (g) Whether the dairy producer, to the best of his or her
12 knowledge, has a plan for managing dairy nutrient discharges that is
13 commensurate with the size of his or her herd, and whether the plan is
14 being fully implemented; and

15 (h) If the fields where dairy nutrients are being applied belong to
16 someone other than the dairy producer whose farm operation generated
17 the nutrients, the name, address, and telephone number of the owners of
18 the property accepting the dairy nutrients.

19 (4) In the mailing to dairy producers containing the registration
20 form, the department shall also provide clear and comprehensive
21 information regarding the requirements of this chapter.

22 (5) The department shall require the registrant to provide only
23 information that is not already available from other sources accessible
24 to the department, such as dairy licensing information.

25 NEW SECTION. **Sec. 4.** Before October 1, 1998, the department and
26 conservation commission shall jointly sponsor and hold an educational
27 workshop for conservation districts from around the state. The purpose
28 of the workshop is to inform local conservation districts about the
29 requirements of this chapter, and for local conservation districts, the
30 conservation commission, and the department to clearly understand their
31 respective roles and responsibilities in carrying out these
32 requirements.

33 NEW SECTION. **Sec. 5.** (1) By October 1, 1998, the department shall
34 initiate an inspection program of all dairy farms in the state. The
35 purpose of the inspections is to:

36 (a) Survey for evidence of violations;

1 (b) Identify corrective actions for actual or imminent discharges
2 that violate or could violate the state's water quality standards;

3 (c) Monitor the development and implementation of dairy nutrient
4 management plans; and

5 (d) Identify dairy producers who would benefit from technical
6 assistance programs.

7 (2) Local conservation district employees may, at their discretion,
8 accompany department inspectors on any scheduled inspection of dairy
9 farms except random, unannounced inspections.

10 (3) Follow-up inspections shall be conducted by the department to
11 ensure that corrective and other actions as identified in the course of
12 initial inspections are being carried out. The department shall also
13 conduct such additional inspections as are necessary to ensure
14 compliance with state and federal water quality requirements, provided
15 that all licensed dairy farms shall be inspected once within two years
16 of the start of this program. The department, in consultation with the
17 advisory and oversight committee established in section 8 of this act,
18 shall develop performance-based criteria to determine the frequency of
19 inspections.

20 (4) Dairy farms shall be prioritized for inspection based on the
21 development of criteria that include, but are not limited to, the
22 following factors:

23 (a) Existence or implementation of a dairy nutrient management
24 plan;

25 (b) Proximity to impaired waters of the state; and

26 (c) Proximity to all other waters of the state. The criteria
27 developed to implement this subsection (4) shall be reviewed by the
28 advisory and oversight committee.

29 NEW SECTION. **Sec. 6.** (1) Except for those producers who already
30 have a certified dairy nutrient management plan as required under the
31 terms and conditions of an individual or general national pollutant
32 discharge elimination system permit, all dairy producers licensed under
33 chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient
34 management plan. If at any time a dairy nutrient management plan fails
35 to prevent the discharge of pollutants to waters of the state, it shall
36 be required to be updated.

37 (2) By January 1, 1999, the conservation commission, in conjunction
38 with the advisory and oversight committee shall develop a document

1 clearly describing the elements that a dairy nutrient management plan
2 must contain to gain local conservation district approval.

3 (3) In developing the elements that an approved dairy nutrient
4 management plan must contain, the commission may authorize the use of
5 methods and technologies other than those developed by the natural
6 resources conservation service. Such methods and technologies shall
7 meet the standards and specifications of:

8 (a) The natural resources conservation service as modified by the
9 geographically based standards developed under section 10 of this act;
10 or

11 (b) A professional engineer with expertise in the area of dairy
12 nutrient management, if the use of any of the standards developed under
13 this subsection (3) would not cause a violation of water quality
14 standards.

15 (4) In evaluating alternative technologies and methods, the
16 principal objectives of the committee's evaluation shall be
17 determining:

18 (a) Whether there is a substantial likelihood that, once
19 implemented, the alternative technologies and methods would not violate
20 water quality requirements;

21 (b) Whether more cost-effective methods can be successfully
22 implemented in some or all categories of dairy operations; and

23 (c) Whether the technologies and methods approved or provided by
24 the natural resources conservation service for use by confined animal
25 feeding operations are necessarily required for other categories of
26 dairy operations.

27 In addition, the committee shall encourage the conservation
28 commission and the conservation districts to apply in dairy nutrient
29 management plans technologies and methods that are appropriate to the
30 needs of the specific type of operation and the specific farm site and
31 to avoid imposing requirements that are not necessary for the specific
32 dairy producer to achieve compliance with water quality requirements.

33 (5) Such plans shall be submitted for approval to the local
34 conservation district where the dairy farm is located, and shall be
35 approved by conservation districts no later than by July 1, 2002. The
36 conservation commission, in conjunction with conservation districts,
37 shall develop a state-wide schedule of plan development and approval to
38 ensure adequate resources are available to have all plans approved by
39 July 1, 2002.

1 (6) If a plan meets the requirements identified in subsection (2)
2 of this section, a conservation district shall approve the plan no
3 later than ninety days after receiving the plan. If the plan does not
4 meet the requirements identified in subsection (2) of this section, the
5 local conservation district shall notify the dairy producer in writing
6 of modifications needed in the plan no later than ninety days after
7 receiving the plan. The dairy producer shall provide a revised plan
8 that includes the needed modifications within ninety days of the date
9 of the local conservation district notification. If the dairy producer
10 does not agree with, or otherwise takes exception to, the modifications
11 requested by the local conservation district, the dairy producer may
12 initiate the appeals process described in section 7 of this act within
13 thirty days of receiving the letter of notification.

14 (7) An approved plan shall be certified by a conservation district
15 and a dairy producer when the elements necessary to implement the plan
16 have been constructed or otherwise put in place, and are being used as
17 designed and intended. A certification form shall be developed by the
18 conservation commission for use state-wide and shall provide for a
19 signature by both a conservation district representative and a dairy
20 producer. Certification forms shall be signed by December 31, 2003,
21 and a copy provided to the department for recording in the data base
22 established in section 9 of this act.

23 NEW SECTION. **Sec. 7.** (1) Conservation district decisions
24 pertaining to denial of approval or denial of certification of a dairy
25 nutrient management plan; modification or amendment of a plan;
26 conditions contained in a plan; application of any dairy nutrient
27 management practices, standards, methods, and technologies to a
28 particular dairy farm; and the failure to adhere to plan review and
29 approval timelines identified in section 6 of this act are appealable
30 under this chapter. Department actions pertaining to water quality
31 violations are appealable under chapter 90.48 RCW.

32 In addition, a dairy producer who is constrained from complying
33 with the planning requirements of this chapter because of financial
34 hardship or local permitting delays may request a hearing before the
35 conservation commission and may request an extension of up to one year
36 beyond the approval and certification dates prescribed in this chapter
37 for plan approval and certification.

1 (2) Within thirty days of receiving a local conservation district
2 notification regarding any of the decisions identified in subsection
3 (1) of this section, a dairy producer who disagrees with any of these
4 decisions may request an informal hearing before the conservation
5 commission or may appeal directly to the pollution control hearings
6 board. The commission shall issue a written decision no later than
7 thirty days after the informal hearing.

8 (3) If the conservation commission upholds the decision of the
9 local conservation district at the informal hearing, the decision of
10 the local conservation district may be appealed to the pollution
11 control hearings board according to the procedure in chapter 43.21B RCW
12 within thirty days of receipt of the commission's decision.

13 (4) When an appeals process is initiated under this section, the
14 length of time extending from the start of the appeals process to its
15 conclusion shall be added onto the timelines provided in this chapter
16 for plan development, approval, and certification only if an appeal is
17 heard by the pollution control hearings board.

18 NEW SECTION. **Sec. 8.** (1) A dairy nutrient management program
19 advisory and oversight committee is established. The committee shall
20 be cochaired by the executive director of the conservation commission
21 and a dairy industry representative. The purpose of the committee is
22 to provide direction to and oversight of the dairy nutrient management
23 inspection program, as well as to encourage the use of appropriate
24 alternative technologies and methods for managing dairy nutrients.

25 (2) The committee shall include no less than eleven, and no more
26 than thirteen members, including one representative from the
27 department, one representative of the dairy industry from each of up to
28 four geographic areas as referenced in section 10 of this act, one
29 representative from the conservation commission, two representatives
30 from local conservation districts, one representative from a local
31 health department, one representative of an environmental organization,
32 and one representative from the shellfish industry. In addition, the
33 natural resources conservation service and the federal environmental
34 protection agency shall each be invited to appoint a representative to
35 the committee.

36 (3) The conservation commission shall contact agencies and
37 organizations representing the interests identified in subsection (2)
38 of this section and request that they notify their employees and

1 membership of the opportunity to serve on the advisory and oversight
2 committee. The commission shall also extend invitations to the two
3 persons representing the natural resources conservation service and the
4 federal environmental protection agency. An association representing
5 the dairy industry shall solicit interest broadly from both within and
6 outside of the association. Persons interested in serving on the
7 advisory and oversight committee shall submit their names to the
8 conservation commission no later than May 1, 1998. By June 1, 1998,
9 the commission shall appoint the required number of members from the
10 nominations received.

11 (4) Commission members shall be compensated according to the
12 provisions for part-time boards established in RCW 43.03.250.

13 (5) The committee shall perform the following functions:

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

15 (b) Maintain meeting minutes and account for the resolution of
16 issues jointly identified by the committee chairs as needing to be
17 addressed;

18 (c) Review the development of the data base, the quarterly data
19 base summary, and the annual report provided by the department under
20 section 9 of this act and RCW 90.64.050;

21 (d) Act as a forum to hear suggestions from any interested parties,
22 including dairy farmers, regarding implementation of the dairy nutrient
23 management program;

24 (e) Review and recommend standardized dairy farm inspection
25 procedures, prioritization criteria, and frequencies and a reporting
26 format to be used by the department;

27 (f) Assist the department and the conservation commission in
28 developing reports to the legislature as required in section 18 of this
29 act; and

30 (g) Review and recommend dairy nutrient management technologies and
31 methods other than those approved or provided by the natural resources
32 conservation service for use as components of nutrient management plans
33 under this chapter.

34 NEW SECTION. **Sec. 9.** (1) By October 1, 1998, the department, in
35 consultation with the advisory and oversight committee, shall develop
36 and maintain a data base to account for the implementation of this
37 chapter.

1 (2) The data base shall track registrations; inspection dates and
2 results, including findings of violations; regulatory and enforcement
3 actions; and the status of dairy nutrient management plans. In
4 addition, the number of dairy farm inspections by inspector shall be
5 tallied by month. A summary of data base information shall be provided
6 quarterly to the advisory and oversight committee.

7 (3) Any information entered into the data base by the department
8 about any aspect of a particular dairy operation may be reviewed by the
9 affected dairy producer upon request. The department shall correct any
10 information in the data base upon a showing that the information is
11 faulty or inaccurate. Complaints that have been filed with the
12 department and determined to be unfounded, invalid, or without merit
13 shall not be recorded in the data base. Appeals of decisions related
14 to dairy nutrient management plans to the pollution control hearings
15 board or to any court shall be recorded, as well as the decisions of
16 those bodies.

17 NEW SECTION. **Sec. 10.** (1) The conservation commission shall
18 establish up to four dairy nutrient management technical assistance
19 teams by June 1, 1998. The teams shall be geographically located
20 throughout the state. Each team shall consist of one or more
21 professional engineers, local conservation district employees, and
22 dairy nutrient management experts from the Washington State University
23 cooperative extension. The purpose of the teams is to:

24 (a) Actively develop and promote new cost-effective approaches for
25 managing dairy nutrients; and

26 (b) Assist dairy farms in developing dairy nutrient management
27 plans.

28 The ability of dairy producers to comply with the planning
29 requirements of this chapter is acknowledged, in many cases, to depend
30 upon the availability of federal and state funding to support technical
31 assistance provided by local conservation districts. Dairy producers
32 shall not be held responsible for noncompliance with the planning
33 requirements of this chapter if conservation districts are unable to
34 perform their duties under this chapter because of insufficient
35 funding.

36 (2) By November 1, 1998, each team shall develop one or more
37 initial sets of standards and specifications to assist dairy producers
38 in developing and implementing dairy nutrient management plans.

1 Standards and specifications developed by a technical assistance team
2 shall be appropriate to the soils and other conditions within that
3 geographic area and shall be reviewed by the advisory and oversight
4 committee.

5 **Sec. 11.** RCW 90.64.030 and 1993 c 221 s 4 are each amended to read
6 as follows:

7 ~~((Upon receiving a complaint or upon its own determination that a
8 dairy animal feeding operation is a likely source of water quality
9 degradation,))~~ (1) Under the inspection program established in section
10 5 of this act, the department may investigate a dairy ((animal feeding
11 operation)) farm to determine whether the operation is discharging
12 ((directly)) pollutants or ((recently)) has ((discharged directly)) a
13 record of discharging pollutants into surface or ground waters of the
14 state. Upon concluding an investigation, the department shall make a
15 written report of its findings, including the results of any water
16 quality measurements, photographs, or other pertinent information, and
17 provide a copy of the report to the dairy producer within twenty days
18 of the investigation.

19 (2) The department shall investigate a written complaint filed
20 with the department within ((ten)) three working days and shall make a
21 written report of its findings including the results of any water
22 quality measurements, photographs, or other pertinent information. A
23 copy of the findings shall be provided ((upon request)) to the dairy
24 ((animal feeding operation)) producer subject to the complaint within
25 twenty days. Only findings of violations shall be entered into the
26 data base identified in section 9 of this act.

27 ~~((Those dairy animal feeding operations that are))~~ (3) A dairy farm
28 that is determined to be a significant contributor of pollution based
29 on actual water quality tests, photographs, or other pertinent
30 information ((if immediate corrective actions are not possible, shall
31 be designated as a concentrated dairy animal feeding operation and
32 shall be)) is subject to the provisions of this chapter and to the
33 enforcement provisions of chapters 43.05 and 90.48 RCW, including civil
34 penalties levied under RCW 90.48.144.

35 (4) For a violation of water quality laws that is a first offense
36 for a dairy producer, the penalty may be waived to allow the producer
37 to come into compliance with water quality laws. The department shall
38 record all legitimate violations and subsequent enforcement actions.

1 (5) A discharge, including a storm water discharge, to surface
2 waters of the state shall not be considered a violation of this
3 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
4 therefore not be enforceable by the department of ecology or a third
5 party, if at the time of the discharge, the conditions in RCW
6 90.64.010(18) are met. In addition, a dairy producer shall not be held
7 liable for violations of this chapter, chapter 90.48 RCW, chapter 173-
8 201A WAC, or the federal clean water act due to the discharge of dairy
9 nutrients to waters of the state resulting from spreading these
10 materials on lands other than where the nutrients were generated, when
11 the nutrients are spread by persons other than the dairy producer or
12 the dairy producer's agent.

13 (6) Agricultural activities associated with the management of dairy
14 nutrients are presumed to be reasonable and shall not be found to
15 constitute a nuisance unless the activity has a substantial adverse
16 effect on public health and safety.

17 (7) This section specifically acknowledges that if a holder of a
18 general or individual national pollutant discharge elimination system
19 permit complies with the permit and the dairy nutrient management plan
20 conditions for appropriate land application practices, the permit
21 provides compliance with the federal clean water act and acts as a
22 shield against citizen or agency enforcement for any additions of
23 pollutants to waters of the state or of the United States as authorized
24 by the permit.

25 (8) A dairy producer who fails to have an approved dairy nutrient
26 management plan by July 1, 2002, or a certified dairy nutrient
27 management plan by December 31, 2003, and for which no appeals have
28 been filed with the pollution control hearings board, is in violation
29 of this chapter. Each month beyond these deadlines that a dairy
30 producer is out of compliance with the requirement for either plan
31 approval or plan certification shall be considered separate violations
32 of chapter 90.64 RCW that may be subject to penalties. Such penalties
33 may not exceed one hundred dollars per month for each violation up to
34 a combined total of five thousand dollars. Failure to register as
35 required in section 3 of this act shall subject a dairy producer to a
36 maximum penalty of one hundred dollars. Penalties shall be levied by
37 the department upon request of the conservation commission.

1 **Sec. 12.** RCW 90.64.050 and 1993 c 221 s 6 are each amended to read
2 as follows:

3 (1) The department has the following duties:

4 (a) Identify existing or potential water quality problems resulting
5 from dairy farms through implementation of the inspection program in
6 section 5 of this act;

7 (b) Inspect a dairy farm upon the request of a dairy producer;

8 (c) Receive, process, and verify complaints concerning discharge of
9 pollutants from all dairy farms ~~((regardless of size))~~;

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

16 ~~((d))~~ (e) Administer and enforce national pollutant~~((s))~~
17 discharge elimination system permits for operators of concentrated
18 dairy animal feeding operations, where required by federal
19 regulations~~((,))~~ and ~~((administer))~~ state laws or upon request of a
20 dairy producer;

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

25 (f) Participate on the advisory and oversight committee;

26 (g) Encourage communication and cooperation between local
27 department personnel and the appropriate conservation district
28 personnel;

29 ~~((g) Encourage))~~ (h) Require the use of ~~((federal soil~~
30 ~~conservation service standards and specifications in designing best~~
31 ~~management practices for))~~ dairy ~~((waste))~~ nutrient management plans
32 ~~((to protect water quality))~~ as required in sections 6, 8, and 10 of
33 this act for entities required to plan under this chapter; and

34 ~~((h))~~ (i) Provide to the commission and the advisory and
35 oversight committee an annual report of dairy ~~((waste pollution))~~
36 nutrient management planning, inspection, and enforcement activities.

37 (2) The department may not delegate its responsibilities in
38 enforcement.

1 **Sec. 13.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read
2 as follows:

3 ~~((1) If the department determines that the operator of a dairy~~
4 ~~animal feeding operation has the means to correct a water quality~~
5 ~~problem in a manner that will prevent future contamination and does so~~
6 ~~promptly and such correction is maintained, the department shall cease~~
7 ~~pursuit of the complaint.~~

8 (2)) If the department determines that an unresolved water quality
9 problem from a dairy ~~((animal feeding operation))~~ farm requires
10 immediate corrective action, the department shall notify the
11 ~~((operator))~~ producer and the district in which the problem is located.
12 When corrective actions are required to address such unresolved water
13 quality problems, the department shall provide copies of all final
14 dairy farm inspection reports and documentation of all formal
15 regulatory and enforcement actions taken by the department against that
16 particular dairy farm to the local conservation district and to the
17 appropriate dairy farm within twenty days.

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

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

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

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

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

34 **Sec. 14.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read
35 as follows:

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

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

1 assistance to the department in identifying and correcting existing
2 water quality problems resulting from dairy farms through
3 implementation of the inspection program in section 5 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 refer complaints
7 received from 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;

11 ~~(d) ((Adopt and carry out a compliance option from level 1, level~~
12 ~~2, level 3, or level 4))~~ Provide technical assistance to dairy
13 producers in developing and implementing a dairy nutrient management
14 plan; and

15 (e) Review, approve, and certify dairy nutrient management plans
16 that meet the minimum standards developed under this chapter.

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

21 **Sec. 15.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read
22 as follows:

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

24 ~~(a) ((Forward to the department the dairy waste management plan~~
25 ~~progress reports;~~

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

29 ~~((e))~~ (b) Provide coordination for conservation district programs
30 at the state level through special arrangements with appropriate
31 federal and state agencies, including oversight of the review,
32 approval, and certification of dairy nutrient management plans;

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

37 (d) Provide an informal hearing for disputes between dairy
38 producers and local conservation districts pertaining to: (i) Denial

1 of approval or denial of certification of dairy nutrient management
2 plans; (ii) modification or amendment of plans; (iii) conditions
3 contained in plans; (iv) application of any dairy nutrient management
4 practices, standards, methods, and technologies to a particular dairy
5 farm; and (v) the failure to adhere to the plan review and approval
6 timelines identified in section 6 of this act. An informal hearing may
7 also provide an opportunity for dairy producers who are constrained
8 from timely compliance with the planning requirements of this chapter
9 because of financial hardship or local permitting delays to petition
10 for additional time to comply.

11 (e) Encourage communication between the conservation district
12 personnel and local department personnel;

13 (f) Accept nominations and appoint ((conservation—district
14 representatives)) members to serve on the ((compliance—review))
15 advisory and oversight committee with advice of the Washington
16 association of conservation districts and the department;

17 (g) ~~((Appoint a commission representative to participate on the~~
18 ~~compliance review committee that will annually review and update policy~~
19 ~~and disseminate information as needed))~~ Provide a cochair to the
20 advisory and oversight committee;

21 (h) Report to the legislature by December 1st of each year until
22 2003 on the technical assistance provided to dairy producers in
23 carrying out the requirements of this chapter; and

24 (i) Work with the department to provide communication outreach to
25 representatives of agricultural and environmental organizations to
26 receive feedback on implementation of this chapter.

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

30 NEW SECTION. Sec. 16. The dairy waste management account is
31 created in the custody of the state treasurer. All receipts from
32 monetary penalties levied pursuant to violations of this chapter must
33 be deposited into the account. Expenditures from the account may be
34 used only for the commission to provide grants to local conservation
35 districts for the sole purpose of assisting dairy producers to develop
36 and fully implement dairy nutrient management plans. Only the chairman
37 of the commission or the chairman's designee may authorize expenditures
38 from the account. The account is subject to allotment procedures under

1 chapter 43.88 RCW, but an appropriation is not required for
2 expenditures.

3 **Sec. 17.** RCW 90.48.465 and 1997 c 398 s 2 are each amended to read
4 as follows:

5 (1) The department shall establish annual fees to collect expenses
6 for issuing and administering each class of permits under RCW
7 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be
8 established by rule within one year of March 1, 1989, and thereafter
9 the fee schedule shall be adjusted no more often than once every two
10 years. This fee schedule shall apply to all permits, regardless of
11 date of issuance, and fees shall be assessed prospectively. All fees
12 charged shall be based on factors relating to the complexity of permit
13 issuance and compliance and may be based on pollutant loading and
14 toxicity and be designed to encourage recycling and the reduction of
15 the quantity of pollutants. Fees shall be established in amounts to
16 fully recover and not to exceed expenses incurred by the department in
17 processing permit applications and modifications, monitoring and
18 evaluating compliance with permits, conducting inspections, securing
19 laboratory analysis of samples taken during inspections, reviewing
20 plans and documents directly related to operations of permittees,
21 overseeing performance of delegated pretreatment programs, and
22 supporting the overhead expenses that are directly related to these
23 activities.

24 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
25 Sec. 1362, for all domestic wastewater facility permits issued under
26 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
27 fifteen cents per month per residence or residential equivalent
28 contributing to the municipality's wastewater system. The department
29 shall adopt by rule a schedule of credits for any municipality engaging
30 in a comprehensive monitoring program beyond the requirements imposed
31 by the department, with the credits available for five years from March
32 1, 1989, and with the total amount of all credits not to exceed fifty
33 thousand dollars in the five-year period.

34 (3) The department shall ensure that indirect dischargers do not
35 pay twice for the administrative expense of a permit. Accordingly,
36 administrative expenses for permits issued by a municipality under RCW
37 90.48.165 are not recoverable by the department.

1 (4) In establishing fees, the department shall consider the
2 economic impact of fees on small dischargers and the economic impact of
3 fees on public entities required to obtain permits for storm water
4 runoff and shall provide appropriate adjustments.

5 (5) The fee for an individual permit issued for a dairy farm as
6 defined under chapter 90.64 RCW shall be capped at fifty cents per
7 animal unit covered by the permit up to two thousand three hundred
8 thirty-four animal units for fiscal year 1998, and two thousand four
9 hundred twenty-eight animal units for fiscal year 1999. The fee for a
10 general permit issued for a dairy farm as defined under chapter 90.64
11 RCW shall be capped at fifty cents per animal unit covered by the
12 permit up to one thousand six hundred thirty-four animal units for
13 fiscal year 1998, and one thousand seven hundred animal units for
14 fiscal year 1999. For animal units in excess of these numbers, the
15 fees shall be as prescribed in WAC 173-224-040.

16 (6) All fees collected under this section shall be deposited in the
17 water quality permit account hereby created in the state treasury.
18 Moneys in the account may be appropriated only for purposes of
19 administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

20 ~~((+6+))~~ (7) Beginning with the biennium ending June 30, 1997, the
21 department shall present a biennial progress report on the use of
22 moneys from the account to the legislature. The report will be due
23 December 31st of odd-numbered years. The report shall consist of
24 information on fees collected, actual expenses incurred, and
25 anticipated expenses for the current and following fiscal years.

26 NEW SECTION. Sec. 18. The department, in conjunction with the
27 conservation commission and advisory and oversight committee, shall
28 report to the legislature by December 1st of each year until 2002, on
29 progress made in implementing chapter . . . , Laws of 1998 (this act).
30 At a minimum, the reports shall include data on inspections, the status
31 of dairy nutrient planning, compliance with water quality standards,
32 and enforcement actions. The report shall also provide recommendations
33 on how implementation of chapter . . . , Laws of 1998 (this act) could
34 be facilitated for dairy producers and generally improved.

35 **Sec. 19.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
36 read as follows:

1 (1) The hearings board shall only have jurisdiction to hear and
2 decide appeals from the following decisions of the department, the
3 director, local conservation districts, the administrator of the office
4 of marine safety, and the air pollution control boards or authorities
5 as established pursuant to chapter 70.94 RCW, or local health
6 departments:

7 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
8 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
9 90.56.330.

10 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
11 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
12 90.14.130, (~~and~~) 90.48.120, and 90.56.330.

13 (c) The issuance, modification, or termination of any permit,
14 certificate, or license by the department or any air authority in the
15 exercise of its jurisdiction, including the issuance or termination of
16 a waste disposal permit, the denial of an application for a waste
17 disposal permit, or the modification of the conditions or the terms of
18 a waste disposal permit.

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

21 (e) Decisions of local health departments regarding the issuance
22 and enforcement of permits to use or dispose of biosolids under RCW
23 70.95J.080.

24 (f) Decisions of local conservation districts related to the denial
25 of approval or denial of certification of a dairy nutrient management
26 plan; conditions contained in a plan; application of any dairy nutrient
27 management practices, standards, methods, and technologies to a
28 particular dairy farm; and failure to adhere to the plan review and
29 approval timelines in section 6 of this act.

30 (g) Any other decision by the department, the administrator of the
31 office of marine safety, or an air authority which pursuant to law must
32 be decided as an adjudicative proceeding under chapter 34.05 RCW.

33 (2) The following hearings shall not be conducted by the hearings
34 board:

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

37 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
38 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

1 (c) Proceedings by the department relating to general adjudications
2 of water rights pursuant to chapter 90.03 or 90.44 RCW.

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

5 (3) Review of rules and regulations adopted by the hearings board
6 shall be subject to review in accordance with the provisions of the
7 Administrative Procedure Act, chapter 34.05 RCW.

8 NEW SECTION. **Sec. 20.** RCW 90.64.090 and 1993 c 221 s 10 are each
9 repealed.

10 NEW SECTION. **Sec. 21.** Sections 3, 5 through 10, 16, and 18 of
11 this act are each added to chapter 90.64 RCW.

12 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

16 NEW SECTION. **Sec. 23.** If specific funding for the purposes of
17 this act, referencing this act by bill or chapter number, is not
18 provided by June 30, 1998, in the omnibus appropriations act, this act
19 is null and void."

20 **SSB 6161** - H COMM AMD
21 By Committee on Agriculture & Ecology

22

23 On page 1, line 1 of the title, after "management;" strike the
24 remainder of the title and insert "amending RCW 90.64.005, 90.64.010,
25 90.64.030, 90.64.050, 90.64.060, 90.64.070, 90.64.080, 90.48.465, and
26 43.21B.110; adding new sections to chapter 90.64 RCW; creating new
27 sections; repealing RCW 90.64.090; prescribing penalties; and declaring
28 an emergency."

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