
HOUSE BILL 1773

State of Washington

57th Legislature

2001 Regular Session

By Representatives Boldt, Mielke and B. Chandler

Read first time 02/02/2001. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to water quality investigations involving dairy
2 farms; and amending RCW 90.64.030.

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

4 **Sec. 1.** RCW 90.64.030 and 1998 c 262 s 11 are each amended to read
5 as follows:

6 (1)(a) Under the inspection program established in RCW 90.64.023,
7 the department may investigate a dairy farm to determine whether the
8 operation is discharging pollutants or has a record of discharging
9 pollutants into surface or ground waters of the state.

10 (b) Prior to the conclusion of the investigation, if the department
11 determines the dairy farm is discharging pollutants, the dairy producer
12 will be provided an opportunity to request:

13 (i) That an additional water sample test be conducted to confirm
14 the initial findings of the department; and

15 (ii) When fecal coliform bacteria levels are found to be in
16 violation of chapter 90.48 RCW, chapter 173-201A WAC, or the federal
17 clean water act, that the department determine the genetic fingerprint
18 of the source of the violation through microbial source tracking using
19 DNA ribotyping or other identification method agreed to by the dairy

1 producer and the department. If the department determines the source
2 of the violation is something other than dairy nutrients, no corrective
3 action by the dairy farm will be required under this act.

4 (c) Upon concluding an investigation, the department shall make a
5 written report of its findings, including the results of any water
6 quality measurements, photographs, or other pertinent information, and
7 provide a copy of the report to the dairy producer within twenty days
8 of the investigation.

9 (2) The department shall investigate a written complaint filed with
10 the department within three working days and shall make a written
11 report of its findings including the results of any water quality
12 measurements, photographs, or other pertinent information. A copy of
13 the findings shall be provided to the dairy producer subject to the
14 complaint within twenty days. Only findings of violations shall be
15 entered into the data base identified in RCW 90.64.130.

16 (3) A dairy farm that is determined to be a significant contributor
17 of pollution based on actual water quality tests, photographs, or other
18 pertinent information is subject to the provisions of this chapter and
19 to the enforcement provisions of chapters 43.05 and 90.48 RCW,
20 including civil penalties levied under RCW 90.48.144.

21 (4) If the department determines that an unresolved water quality
22 problem from a dairy farm requires immediate corrective action, the
23 department shall notify the producer and the district in which the
24 problem is located. When corrective actions are required to address
25 such unresolved water quality problems, the department shall provide
26 copies of all final dairy farm inspection reports and documentation of
27 all formal regulatory and enforcement actions taken by the department
28 against that particular dairy farm to the local conservation district
29 and to the appropriate dairy farm within twenty days.

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

34 (6) A discharge, including a storm water discharge, to surface
35 waters of the state shall not be considered a violation of this
36 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
37 therefore not be enforceable by the department of ecology or a third
38 party, if at the time of the discharge, a violation is not occurring
39 under RCW 90.64.010(18). In addition, a dairy producer shall not be

1 held liable for violations of this chapter, chapter 90.48 RCW, chapter
2 173-201A WAC, or the federal clean water act due to the discharge of
3 dairy nutrients to waters of the state resulting from spreading these
4 materials on lands other than where the nutrients were generated, when
5 the nutrients are spread by persons other than the dairy producer or
6 the dairy producer's agent.

7 (7) As provided under RCW 7.48.305, agricultural activities
8 associated with the management of dairy nutrients are presumed to be
9 reasonable and shall not be found to constitute a nuisance unless the
10 activity has a substantial adverse effect on public health and safety.

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

19 (9) A dairy producer who fails to have an approved dairy nutrient
20 management plan by July 1, 2002, or a certified dairy nutrient
21 management plan by December 31, 2003, and for which no appeals have
22 been filed with the pollution control hearings board, is in violation
23 of this chapter. Each month beyond these deadlines that a dairy
24 producer is out of compliance with the requirement for either plan
25 approval or plan certification shall be considered separate violations
26 of chapter 90.64 RCW that may be subject to penalties. Such penalties
27 may not exceed one hundred dollars per month for each violation up to
28 a combined total of five thousand dollars. Failure to register as
29 required in RCW 90.64.017 shall subject a dairy producer to a maximum
30 penalty of one hundred dollars. Penalties shall be levied by the
31 department.

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