
SUBSTITUTE SENATE BILL 5677

State of Washington

61st Legislature

2009 Regular Session

By Senate Agriculture & Rural Economic Development (originally sponsored by Senator Hatfield)

READ FIRST TIME 02/09/09.

1 AN ACT Relating to the dairy nutrient management program; amending
2 RCW 90.64.010; adding a new section to chapter 90.64 RCW; repealing RCW
3 90.64.015, 90.64.140, and 90.64.160; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.64 RCW
6 to read as follows:

7 The director of agriculture may enter at all reasonable times in or
8 upon dairy farms for the purpose of inspecting and investigating
9 conditions relating to the pollution of any waters of the state.

10 If the director of agriculture or the director's duly appointed
11 agent is denied access to a dairy farm, he or she may apply to a court
12 of competent jurisdiction for a search warrant authorizing access to
13 the property and facilities at a reasonable time for purposes of
14 conducting tests and inspections, taking samples, and examining
15 records. To show that access is denied, the director of agriculture
16 shall file with the court an affidavit or declarations containing a
17 description of his or her attempts to notify and locate the owner or
18 the owner's agent and to secure consent. Upon application, the court
19 may issue a search warrant for the purposes requested.

1 **Sec. 2.** RCW 90.64.010 and 1998 c 262 s 2 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Advisory and oversight committee" means a balanced committee
6 of agency, dairy farm, and interest group representatives convened to
7 provide oversight and direction to the dairy nutrient management
8 program.

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

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

14 (4) "Certification" means:

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

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

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

24 (6) "Conservation commission" or "commission" means the
25 conservation commission under chapter 89.08 RCW.

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

28 (8) "Concentrated dairy animal feeding operation" means a dairy
29 animal feeding operation subject to regulation under this chapter which
30 the director designates under RCW 90.64.020 or meets the following
31 criteria:

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

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

36 (i) From which pollutants are discharged into navigable waters
37 through a manmade ditch, flushing system, or other similar manmade
38 device; or

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

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

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

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

16 (10) "Dairy farm" means any farm that is licensed to produce milk
17 under chapter 15.36 RCW.

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

20 (12) "Dairy nutrient management plan" means a plan meeting the
21 requirements established under RCW 90.64.026.

22 ~~(13) ("Dairy nutrient management technical assistance team" means~~
23 ~~one or more professional engineers and local conservation district~~
24 ~~employees convened to serve one of four distinct geographic areas in~~
25 ~~the state.~~

26 ~~(14))~~ "Dairy producer" means a person who owns or operates a dairy
27 farm.

28 ~~((15))~~ (14) "Department" means the department of ecology under
29 chapter 43.21A RCW.

30 ~~((16))~~ (15) "Director" means the director of the department of
31 ecology, or his or her designee.

32 ~~((17))~~ (16) "Upset" means an exceptional incident in which there
33 is an unintentional and temporary noncompliance with technology-based
34 permit effluent limitations because of factors beyond the reasonable
35 control of the dairy. An upset does not include noncompliance to the
36 extent caused by operational error, improperly designed treatment
37 facilities, inadequate treatment facilities, lack of preventive
38 maintenance, or careless or improper operation.

1 ((+18+)) (17) "Violation" means the following acts or omissions:

2 (a) A discharge of pollutants into the waters of the state, except
3 those discharges that are due to a chronic or catastrophic event, or to
4 an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as
5 provided in 40 C.F.R. Sec. 122.41, and that occur when:

6 (i) A dairy producer has a current national pollutant discharge
7 elimination system permit with a wastewater system designed, operated,
8 and maintained for the current herd size and that contains all process-
9 generated wastewater plus average annual precipitation minus
10 evaporation plus contaminated storm water runoff from a twenty-five
11 year, twenty-four hour rainfall event for that specific location, and
12 the dairy producer has complied with all permit conditions, including
13 dairy nutrient management plan conditions for appropriate land
14 application practices; or

15 (ii) A dairy producer does not have a national pollutant discharge
16 elimination system permit, but has complied with all of the elements of
17 a dairy nutrient management plan that: Prevents the discharge of
18 pollutants to waters of the state, is commensurate with the dairy
19 producer's current herd size, and is approved and certified under RCW
20 90.64.026;

21 (b) Failure to register as required under RCW 90.64.017; (~~(c)~~)

22 (c)(i) Until July 1, 2011, failure to keep for a period of three
23 years all records necessary to show that applications of nutrients to
24 the land were within acceptable agronomic rates, unless otherwise
25 required by law; and

26 (ii) Beginning July 1, 2011, failure to keep for a period of five
27 years all records necessary to show that applications of nutrients to
28 the land were within acceptable agronomic rates;

29 (d) The lack of an approved dairy nutrient management plan by July
30 1, 2002; or

31 ~~((+d+))~~ (e) The lack of a certified dairy nutrient management plan
32 for a dairy farm after December 31, 2003.

33 NEW SECTION. Sec. 3. The following acts or parts of acts are each
34 repealed:

35 (1) RCW 90.64.015 (Environmental excellence program agreements--
36 Effect on chapter) and 1997 c 381 s 29;

1 (2) RCW 90.64.140 (Technical assistance teams--Standards and
2 specifications for dairy nutrient management plans) and 1998 c 262 s
3 10; and

4 (3) RCW 90.64.160 (Grants for dairy producers--Statement of
5 environmental benefits--Development of outcome-focused performance
6 measures) and 2001 c 227 s 4.

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