

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6161

Chapter 262, Laws of 1998
(partial veto)

55th Legislature
1998 Regular Session

DAIRY NUTRIENT MANAGEMENT PROGRAM

EFFECTIVE DATE: 4/1/98

Passed by the Senate March 10, 1998
YEAS 37 NAYS 12

BRAD OWEN

President of the Senate

Passed by the House March 5, 1998
YEAS 97 NAYS 1

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 1, 1998, with the
exception of section 8, which is
vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SUBSTITUTE SENATE BILL 6161 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

MIKE O'CONNELL

Secretary

FILED

April 1, 1998 - 3:05 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6161

AS AMENDED BY THE HOUSE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Agriculture & Environment (originally sponsored by Senators Swecker, Newhouse, Rasmussen and Anderson)

Read first time 1/23/98.

1 AN ACT Relating to dairy nutrient management; amending RCW
2 90.64.005, 90.64.010, 90.64.030, 90.64.050, 90.64.070, 90.64.080,
3 90.48.465, and 43.21B.110; adding new sections to chapter 90.64 RCW;
4 creating new sections; repealing RCW 90.64.060 and 90.64.090;
5 prescribing penalties; and declaring an emergency.

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

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

1 legislature finds that significant work has been ongoing over a period
2 of time and that the intent of this chapter is to take the consensus
3 that has been developed and place it into statutory form.

4 It is also the intent of this chapter to establish an inspection
5 and technical assistance program for dairy farms to address the
6 discharge of pollution to surface and ground waters of the state that
7 will lead to water quality compliance by the industry. A further
8 purpose is to create a balanced program involving technical assistance,
9 regulation, and enforcement with coordination and oversight of the
10 program by a committee composed of industry, agency, and other
11 representatives. Furthermore, it is the objective of this chapter to
12 maintain the administration of the water quality program as it relates
13 to dairy operations at the state level.

14 It is also the intent of this chapter to recognize the existing
15 working relationships between conservation districts, the conservation
16 commission, and the department of ecology in protecting water quality
17 of the state. A further purpose of this chapter is to provide
18 statutory recognition of the coordination of the functions of
19 conservation districts, the conservation commission, and the department
20 of ecology pertaining to development of dairy waste management plans
21 for the protection of water quality.

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

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

26 (1) "Advisory and oversight committee" means a balanced committee
27 of agency, dairy farm, and interest group representatives convened to
28 provide oversight and direction to the dairy nutrient management
29 program.

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

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

35 (4) "Certification" means:

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

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

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

7 (6) "Conservation commission" or "commission" means the
8 conservation commission under chapter 89.08 RCW.

9 ~~((+2))~~ (7) "Conservation districts" or "district" means a
10 subdivision of state government organized under chapter 89.08 RCW.

11 ~~((+3))~~ (8) "Concentrated dairy animal feeding operation" means a
12 dairy animal feeding operation subject to regulation under this chapter
13 which the director designates under RCW ~~((90.64.030))~~ 90.64.020 or
14 meets the following criteria:

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

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

19 (i) From which pollutants are discharged into navigable waters
20 through a manmade ditch, flushing system, or other similar manmade
21 device; or

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

26 ~~((+4))~~ (9) "Dairy animal feeding operation" means a lot or
27 facility where the following conditions are met:

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

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

37 ~~((+5))~~ (10) "Dairy farm" means any farm that is licensed to
38 produce milk under chapter 15.36 RCW.

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

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

5 (13) "Dairy nutrient management technical assistance team" means
6 one or more professional engineers and local conservation district
7 employees convened to serve one of four distinct geographic areas in
8 the state.

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

11 (15) "Department" means the department of ecology under chapter
12 43.21A RCW.

13 ~~((+6))~~ (16) "Director" means the director of the department of
14 ecology, or his or her designee.

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

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

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

27 (i) A dairy producer has a current national pollutant discharge
28 elimination system permit with a wastewater system designed, operated,
29 and maintained for the current herd size and that contains all process-
30 generated wastewater plus average annual precipitation minus
31 evaporation plus contaminated storm water runoff from a twenty-five
32 year, twenty-four hour rainfall event for that specific location, and
33 the dairy producer has complied with all permit conditions, including
34 dairy nutrient management plan conditions for appropriate land
35 application practices; or

36 (ii) A dairy producer does not have a national pollutant discharge
37 elimination system permit, but has complied with all of the elements
38 of a dairy nutrient management plan that: Prevents the discharge of
39 pollutants to waters of the state, is commensurate with the dairy

1 producer's current herd size, and is approved and certified under
2 section 6 of this act;

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

4 (c) The lack of an approved dairy nutrient management plan by July
5 1, 2002; or

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

8 NEW SECTION. Sec. 3. (1) Every dairy producer licensed under
9 chapter 15.36 RCW shall register with the department by September 1,
10 1998, and shall reregister with the department by September 1st of
11 every even-numbered year. Every dairy producer licensed after
12 September 1, 1998, shall register with the department within sixty days
13 of licensing. The purpose of registration is to provide and update
14 baseline information for the dairy nutrient management program.

15 (2) To facilitate registration, the department shall obtain from
16 the food safety and animal health division of the department of
17 agriculture a current list of all licensed dairy producers in the state
18 and mail a registration form to each licensed dairy producer no later
19 than July 15, 1998.

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

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

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

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

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

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

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

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

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

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

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

4 NEW SECTION. **Sec. 4.** Before October 1, 1998, the department and
5 conservation commission shall jointly sponsor and hold an educational
6 workshop for conservation districts from around the state. The purpose
7 of the workshop is to inform local conservation districts about the
8 requirements of this chapter, and for local conservation districts, the
9 conservation commission, and the department to clearly understand their
10 respective roles and responsibilities in carrying out these
11 requirements.

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

- 15 (a) Survey for evidence of violations;
- 16 (b) Identify corrective actions for actual or imminent discharges
17 that violate or could violate the state's water quality standards;
- 18 (c) Monitor the development and implementation of dairy nutrient
19 management plans; and
- 20 (d) Identify dairy producers who would benefit from technical
21 assistance programs.

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

25 (3) Follow-up inspections shall be conducted by the department to
26 ensure that corrective and other actions as identified in the course of
27 initial inspections are being carried out. The department shall also
28 conduct such additional inspections as are necessary to ensure
29 compliance with state and federal water quality requirements, provided
30 that all licensed dairy farms shall be inspected once within two years
31 of the start of this program. The department, in consultation with the
32 advisory and oversight committee established in section 8 of this act,
33 shall develop performance-based criteria to determine the frequency of
34 inspections.

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

1 (a) Existence or implementation of a dairy nutrient management
2 plan;
3 (b) Proximity to impaired waters of the state; and
4 (c) Proximity to all other waters of the state. The criteria
5 developed to implement this subsection (4) shall be reviewed by the
6 advisory and oversight committee.

7 NEW SECTION. **Sec. 6.** (1) Except for those producers who already
8 have a certified dairy nutrient management plan as required under the
9 terms and conditions of an individual or general national pollutant
10 discharge elimination system permit, all dairy producers licensed under
11 chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient
12 management plan. If at any time a dairy nutrient management plan fails
13 to prevent the discharge of pollutants to waters of the state, it shall
14 be required to be updated.

15 (2) By November 1, 1998, the conservation commission, in
16 conjunction with the advisory and oversight committee established under
17 section 8 of this act shall develop a document clearly describing the
18 elements that a dairy nutrient management plan must contain to gain
19 local conservation district approval.

20 (3) In developing the elements that an approved dairy nutrient
21 management plan must contain, the commission may authorize the use of
22 other methods and technologies than those developed by the natural
23 resources conservation service when such alternatives have been
24 evaluated by the advisory and oversight committee. Alternative methods
25 and technologies shall meet the standards and specifications of:

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

29 (b) A professional engineer with expertise in the area of dairy
30 nutrient management.

31 (4) In evaluating alternative technologies and methods, the
32 principal objectives of the committee's evaluation shall be
33 determining:

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

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

1 (c) Whether the technologies and methods approved or provided by
2 the natural resources conservation service for use by confined animal
3 feeding operations are necessarily required for other categories of
4 dairy operations.

5 In addition, the committee shall encourage the conservation
6 commission and the conservation districts to apply in dairy nutrient
7 management plans technologies and methods that are appropriate to the
8 needs of the specific type of operation and the specific farm site and
9 to avoid imposing requirements that are not necessary for the specific
10 dairy producer to achieve compliance with water quality requirements.

11 (5) Such plans shall be submitted for approval to the local
12 conservation district where the dairy farm is located, and shall be
13 approved by conservation districts no later than by July 1, 2002. The
14 conservation commission, in conjunction with conservation districts,
15 shall develop a state-wide schedule of plan development and approval to
16 ensure adequate resources are available to have all plans approved by
17 July 1, 2002.

18 (6) If a dairy producer leases land for dairy production from an
19 owner who has prohibited the development of capital improvements, such
20 as storage lagoons, on the leased property, the dairy producer shall
21 indicate in his or her dairy nutrient management plan that such
22 improvements are prohibited by the landowner and shall describe other
23 methods, such as land application, that will be employed by the dairy
24 producer to manage dairy nutrients.

25 (7) Notwithstanding the timelines in this section, any dairy farm
26 licensed after September 1, 1998, shall have six months from the date
27 of licensing to develop a dairy nutrient management plan and another
28 eighteen months to fully implement that plan.

29 (8) If a plan contains the elements identified in subsection (2) of
30 this section, a conservation district shall approve the plan no later
31 than ninety days after receiving the plan. If the plan does not
32 contain the elements identified in subsection (2) of this section, the
33 local conservation district shall notify the dairy producer in writing
34 of modifications needed in the plan no later than ninety days after
35 receiving the plan. The dairy producer shall provide a revised plan
36 that includes the needed modifications within ninety days of the date
37 of the local conservation district notification. If the dairy producer
38 does not agree with, or otherwise takes exception to, the modifications
39 requested by the local conservation district, the dairy producer may

1 initiate the appeals process described in section 7 of this act within
2 thirty days of receiving the letter of notification.

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

12 (10) The ability of dairy producers to comply with the planning
13 requirements of this chapter depends, in many cases, on the
14 availability of federal and state funding to support technical
15 assistance provided by local conservation districts. Dairy producers
16 shall not be held responsible for noncompliance with the planning
17 requirements of this chapter if conservation districts are unable to
18 perform their duties under this chapter because of insufficient
19 funding.

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

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

35 (2) Within thirty days of receiving a local conservation district
36 notification regarding any of the decisions identified in subsection
37 (1) of this section, a dairy producer who disagrees with any of these
38 decisions may request an informal hearing before the conservation

1 commission or may appeal directly to the pollution control hearings
2 board. The commission shall issue a written decision no later than
3 thirty days after the informal hearing.

4 (3) If the conservation commission reverses the decision of the
5 conservation district, the conservation district may appeal this
6 reversal to the pollution control hearings board according to the
7 procedure in chapter 43.21B RCW within thirty days of receipt of the
8 commission's decision.

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

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

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

32 (3) *The conservation commission shall contact agencies and*
33 *organizations representing the interests identified in subsection (2)*
34 *of this section and request that they notify their employees and*
35 *membership of the opportunity to serve on the advisory and oversight*
36 *committee. The commission shall also extend the invitations to the*
37 *natural resources conservation service and the federal environmental*
38 *protection agency. An association representing the dairy industry*

1 shall solicit interest broadly from both within and outside of the
2 association. Persons interested in serving on the advisory and
3 oversight committee shall submit their names to the conservation
4 commission no later than May 1, 1998. By June 1, 1998, the commission
5 shall appoint the required number of members from the nominations
6 received.

7 (4) Advisory and oversight committee members shall be compensated
8 under RCW 43.03.230 and shall be reimbursed for expenses as provided
9 under RCW 43.03.050 and 43.03.060.

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

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

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

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

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

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

24 (f) Assist the department and the conservation commission in
25 developing reports to the legislature as required in section 17 of this
26 act; and

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

31 *Sec. 8 was vetoed. See message at end of chapter.

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

36 (2) The data base shall track registrations; inspection dates and
37 results, including findings of violations; regulatory and enforcement
38 actions; and the status of dairy nutrient management plans. In

1 addition, the number of dairy farm inspections by inspector shall be
2 tallied by month. A summary of data base information shall be provided
3 quarterly to the advisory and oversight committee.

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

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

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

23 (b) Assist dairy farms in developing dairy nutrient management
24 plans.

25 (2) By January 1, 1999, each team shall develop one or more initial
26 sets of standards and specifications to assist dairy producers in
27 developing and implementing dairy nutrient management plans. Standards
28 and specifications developed by a technical assistance team shall be
29 appropriate to the soils and other conditions within that geographic
30 area and shall be reviewed by the advisory and oversight committee.

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

33 (~~Upon receiving a complaint or upon its own determination that a~~
34 ~~dairy animal feeding operation is a likely source of water quality~~
35 ~~degradation,)) (1) Under the inspection program established in section~~
36 5 of this act, the department may investigate a dairy (~~animal feeding~~
37 ~~operation)) farm to determine whether the operation is discharging~~

1 ~~((directly))~~ pollutants or ~~((recently))~~ has ~~((discharged directly))~~ a
2 record of discharging pollutants into surface or ground waters of the
3 state. Upon concluding an investigation, the department shall make a
4 written report of its findings, including the results of any water
5 quality measurements, photographs, or other pertinent information, and
6 provide a copy of the report to the dairy producer within twenty days
7 of the investigation.

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

16 ~~((Those dairy animal feeding operations that are))~~ (3) A dairy farm
17 that is determined to be a significant contributor of pollution based
18 on actual water quality tests, photographs, or other pertinent
19 information ~~((if immediate corrective actions are not possible, shall~~
20 ~~be designated as a concentrated dairy animal feeding operation and~~
21 ~~shall be))~~ is subject to the provisions of this chapter and to the
22 enforcement provisions of chapters 43.05 and 90.48 RCW, including civil
23 penalties levied under RCW 90.48.144.

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

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

37 (6) A discharge, including a storm water discharge, to surface
38 waters of the state shall not be considered a violation of this
39 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall

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

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

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

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

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

37 (1) The department has the following duties:

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

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

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

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

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

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

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

23 (g) Encourage communication and cooperation between local
24 department personnel and the appropriate conservation district
25 personnel;

26 (~~((g) Encourage))~~) (h) Require the use of (~~(federal soil~~
27 ~~conservation service standards and specifications in designing best~~
28 ~~management practices for)) dairy (~~(waste))~~ nutrient management plans
29 (~~(to protect water quality))~~) as required under this chapter for
30 entities required to plan under this chapter; and~~

31 (~~((h))~~) (i) Provide to the commission and the advisory and
32 oversight committee an annual report of dairy (~~(waste pollution))~~) farm
33 inspection and enforcement activities.

34 (2) The department may not delegate its responsibilities in
35 enforcement.

36 **Sec. 13.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read
37 as follows:

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

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

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

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

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

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

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~~) nutrient management program.

23 **Sec. 14.** 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~~) nutrient management program implementation;

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

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

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

13 (e) Encourage communication between the conservation district
14 personnel and local department personnel;

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

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

23 (h) Report to the legislature by December 1st of each year until
24 2003 on the status of dairy nutrient management planning and on the
25 technical assistance provided to dairy producers in carrying out the
26 requirements of this chapter; and

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

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

33 **NEW SECTION.** **Sec. 15.** The dairy waste management account is
34 created in the custody of the state treasurer. All receipts from
35 monetary penalties levied pursuant to violations of this chapter must
36 be deposited into the account. Expenditures from the account may be
37 used only for the commission to provide grants to local conservation
38 districts for the sole purpose of assisting dairy producers to develop

1 and fully implement dairy nutrient management plans. Only the chairman
2 of the commission or the chairman's designee may authorize expenditures
3 from the account. The account is subject to allotment procedures under
4 chapter 43.88 RCW, but an appropriation is not required for
5 expenditures.

6 **Sec. 16.** RCW 90.48.465 and 1997 c 398 s 2 are each amended to read
7 as follows:

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

27 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
28 Sec. 1362, for all domestic wastewater facility permits issued under
29 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
30 fifteen cents per month per residence or residential equivalent
31 contributing to the municipality's wastewater system. The department
32 shall adopt by rule a schedule of credits for any municipality engaging
33 in a comprehensive monitoring program beyond the requirements imposed
34 by the department, with the credits available for five years from March
35 1, 1989, and with the total amount of all credits not to exceed fifty
36 thousand dollars in the five-year period.

37 (3) The department shall ensure that indirect dischargers do not
38 pay twice for the administrative expense of a permit. Accordingly,

1 administrative expenses for permits issued by a municipality under RCW
2 90.48.165 are not recoverable by the department.

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

7 (5) The fee for an individual permit issued for a dairy farm as
8 defined under chapter 90.64 RCW shall be fifty cents per animal unit up
9 to one thousand one hundred sixty-seven dollars for fiscal year 1998
10 and one thousand two hundred fourteen dollars for fiscal year 1999.
11 The fee for a general permit issued for a dairy farm as defined under
12 chapter 90.64 RCW shall be fifty cents per animal unit up to eight
13 hundred seventeen dollars for fiscal year 1998 and eight hundred fifty
14 dollars for fiscal year 1999. Thereafter, these fees may rise in
15 accordance with the fiscal growth factor as provided in chapter 43.135
16 RCW.

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

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

27 NEW SECTION. Sec. 17. The department, in conjunction with the
28 conservation commission and advisory and oversight committee, shall
29 report to the legislature by December 1st of each year until 2003, on
30 progress made in implementing chapter . . . , Laws of 1998 (this act).
31 At a minimum, the reports shall include data on inspections, the status
32 of dairy nutrient planning, compliance with water quality standards,
33 and enforcement actions. The report shall also provide recommendations
34 on how implementation of chapter . . . , Laws of 1998 (this act) could
35 be facilitated for dairy producers and generally improved.

36 The conservation commission shall include in the report to the
37 legislature filed December 1, 1999, an evaluation of whether the fiscal
38 resources available to the commission, to conservation districts, and

1 to Washington State University dairy nutrient management experts are
2 adequate to fund the technical assistance teams established under
3 section 10 of this act and to develop and certify plans as required by
4 the schedule established in section 6 of this act. If the funding is
5 insufficient, the report shall include an estimate of the amount of
6 funding necessary to accomplish the schedule contained in section 6 of
7 this act.

8 **Sec. 18.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to
9 read as follows:

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

16 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
17 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
18 90.56.330.

19 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
20 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
21 90.14.130, ~~((and))~~ 90.48.120, and 90.56.330.

22 (c) The issuance, modification, or termination of any permit,
23 certificate, or license by the department or any air authority in the
24 exercise of its jurisdiction, including the issuance or termination of
25 a waste disposal permit, the denial of an application for a waste
26 disposal permit, or the modification of the conditions or the terms of
27 a waste disposal permit.

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

30 (e) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70.95J.080.

33 (f) Decisions of local conservation districts related to the denial
34 of approval or denial of certification of a dairy nutrient management
35 plan; conditions contained in a plan; application of any dairy nutrient
36 management practices, standards, methods, and technologies to a
37 particular dairy farm; and failure to adhere to the plan review and
38 approval timelines in section 6 of this act.

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

4 (2) The following hearings shall not be conducted by the hearings
5 board:

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

8 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
9 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

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

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

17 NEW SECTION. **Sec. 19.** RCW 90.64.060 and 1993 c 221 s 7 are each
18 repealed.

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

21 NEW SECTION. **Sec. 21.** Sections 3, 5 through 10, 15, and 17 of
22 this act are each added to chapter 90.64 RCW.

23 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 immediately.

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

Passed the Senate March 10, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 1, 1998, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 8,
3 Substitute Senate Bill No. 6161 entitled:

4 "AN ACT Relating to dairy nutrient management;"

5 SSB 6161 makes significant changes in the operation and regulation
6 of dairies in the state of Washington. This bill will be of great
7 benefit to our water quality and the public's health. I commend the
8 dairy industry for its strong support of this bill.

9 Section 8 of SSB 6161 would create a Dairy Nutrient Management
10 Program Advisory and Oversight Committee, consisting of governmental
11 and non-governmental members. That committee would provide "direction
12 to and oversight of" the dairy nutrient management program. Clearly,
13 the state can benefit from the advice and counsel of those who will be
14 most affected by this bill. However, the dairy inspection program is
15 a governmental program and must be carried out by the Department of
16 Ecology, the responsible governmental entity. It is inappropriate to
17 give directive and oversight responsibilities to a non-governmental
18 body. In addition, the portion of section 8 that provides for
19 compensation of committee members contains drafting errors and is
20 defective.

21 Very clearly, the advisory functions spelled out in section 8 are
22 beneficial to the effective operation of the program. With this
23 message, I am directing the Department of Ecology to establish such a
24 committee to perform the advisory functions provided for in section
25 8(5).

26 For these reasons, I have vetoed section 8 of Substitute Senate
27 Bill No. 6161.

28 With the exception of section 8, Substitute Senate Bill No. 6161 is
29 approved."