

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5889

Chapter 325, Laws of 2003

58th Legislature
2003 Regular Session

ANIMAL FEEDING OPERATIONS

EFFECTIVE DATE: 7/27/03 - Except sections 2 and 6, which become effective 7/1/03.

Passed by the Senate April 26, 2003
YEAS 39 NAYS 8

BRAD OWEN

President of the Senate

Passed by the House April 26, 2003
YEAS 97 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 16, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5889** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

May 16, 2003 - 3:38 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5889

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Agriculture (originally sponsored by Senators Swecker and Rasmussen)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to animal feeding operations; amending RCW
2 90.64.030, 90.64.120, 90.64.150, and 90.48.260; adding a new section to
3 chapter 90.64 RCW; creating new sections; providing an effective date;
4 providing an expiration date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A livestock nutrient management program is
7 essential to ensuring a healthy and productive livestock industry in
8 Washington state. The goal of the program must be to provide clear
9 guidance to livestock farms as to their responsibilities under state
10 and federal law to protect water quality while maintaining a healthy
11 business climate for these farms. The program should develop
12 reasonable financial assistance resources, educational and technical
13 assistance to meet these responsibilities, and provide for periodic
14 inspection and enforcement actions to ensure compliance with state and
15 federal water quality laws. The legislature intends that by 2006,
16 there will be a fully functioning state program for concentrated animal
17 feeding operations in the state, and that this program will be a single
18 program for all livestock sectors.

1 The legislature finds that a livestock nutrient management program
2 is necessary to address the federal rule changes with which livestock
3 operations must comply. Furthermore, budgetary conditions demand
4 efficient and effective governance. In addition, many of the existing
5 requirements and goals for dairy farms will be completed by December
6 2003, and revisions will be needed.

7 NEW SECTION. **Sec. 2.** (1) A livestock nutrient management program
8 development and oversight committee is created comprised of the
9 following members, appointed as follows:

10 (a) The director of the department of agriculture, or the
11 director's designee, who shall serve as committee chair;

12 (b) The director of the department of ecology, or the director's
13 designee;

14 (c) A representative of the United States environmental protection
15 agency, appointed by the regional director of the agency unless the
16 agency chooses not to be represented on the committee;

17 (d) A representative of commercial shellfish growers, nominated by
18 an organization representing these growers, appointed by the governor;

19 (e) A representative of an environmental interest organization with
20 familiarity and expertise in water quality issues, appointed by the
21 governor;

22 (f) A representative of tribal governments as nominated by an
23 organization representing tribal governments, appointed by the
24 governor;

25 (g) A representative of Washington State University appointed by
26 the dean of the college of agriculture and home economics;

27 (h) A representative of the Washington association of conservation
28 districts, appointed by the association's board of officers;

29 (i) Three representatives of dairy producers nominated by a
30 statewide organization representing dairy producers in the state,
31 appointed by the governor;

32 (j) Two representatives of beef cattle producers nominated by a
33 statewide organization representing beef cattle producers in the state,
34 appointed by the governor;

35 (k) One representative of poultry producers nominated by a
36 statewide organization representing poultry producers in the state,
37 appointed by the governor;

1 (1) One representative of the commercial cattle feedlots nominated
2 by a statewide organization representing commercial cattle feedlots in
3 the state, appointed by the governor; and

4 (m) A representative of any other segment of the livestock industry
5 determined by the director of agriculture to be subject to federal
6 rules regulating animal feeding or concentrated animal feeding
7 operations.

8 (2) The state department of agriculture shall provide staff for the
9 committee. The department of agriculture may request staff assistance
10 be assigned by the United States environmental protection agency to
11 assist the director in staffing the committee.

12 (3) The committee shall establish a work plan that includes a list
13 of tasks and a projected completion date for each task.

14 (4) The committee may establish a subcommittee for each of the
15 major industry segments that is covered by the recently adopted federal
16 regulations that pertain to animal feeding operations and concentrated
17 animal feeding operations. The subcommittee shall be composed of
18 selected members of the full committee and additional representatives
19 from that major segment of the livestock industry as determined by the
20 director. The committee shall assign tasks to the subcommittees and
21 shall establish dates for each subcommittee to report back to the full
22 committee.

23 (5) The committee shall examine the recently adopted federal
24 regulations that provide for the regulation of animal feeding
25 operations and concentrated animal feeding operations and develop a
26 program to be administered by the department of agriculture that meets
27 the requirements and time frames contained in the federal rules.
28 Elements that the committee shall evaluate include:

29 (a) A process for adopting standards and for developing plans for
30 each operation that meet these standards;

31 (b) A process for revising current national pollution discharge
32 elimination system permits currently held by livestock operations and
33 to transition these permits into the new system; and

34 (c) In consultation with the director, a determination of what
35 other work is needed and what other institutional relationships are
36 needed or desirable. The committee shall consult with representatives
37 of the statewide association of conservation districts regarding any

1 functions or activities that are proposed to be provided through local
2 conservation districts.

3 (6) The committee shall review and comment on proposals for grants
4 from the livestock nutrient management account created in RCW
5 90.64.150.

6 (7) The committee shall develop draft proposed legislation that
7 includes:

8 (a) Statutory changes, including a time line to achieve the phased-
9 in levels of regulation under federal law, to comply with the minimum
10 requirements under federal law and the minimum requirements under
11 chapter 90.48 RCW. These changes must meet the requirements necessary
12 to enable the department of agriculture and the department of ecology
13 to pursue the United States environmental protection agency's approval
14 of the transfer of the permitting program as it relates to the
15 concentrated animal feeding operations from the department of ecology
16 to the department of agriculture;

17 (b) Statutory changes necessitated by the transfer of functions
18 under chapter 90.64 RCW from the department of ecology to the
19 department of agriculture;

20 (c) Continued inspection of dairy operations at least once every
21 two years;

22 (d) An outreach and education program to inform the various animal
23 feeding operations and concentrated animal feeding operations of the
24 program's elements; and

25 (e) Annual reporting to the legislature on the progress of the
26 state strategy for implementing the animal feeding operation and
27 concentrated animal feeding operation.

28 (8) The committee shall provide a report by December 1, 2003, to
29 appropriate committees of the legislature that includes the results of
30 the committee's evaluation under subsection (5) of this section and
31 draft legislation to initiate the program.

32 (9) This section expires June 30, 2006.

33 **Sec. 3.** RCW 90.64.030 and 2002 c 327 s 1 are each amended to read
34 as follows:

35 (1) Under the inspection program established in RCW 90.64.023, the
36 department may investigate a dairy farm to determine whether the
37 operation is discharging pollutants or has a record of discharging

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

6 (2) The department shall investigate a written complaint filed with
7 the department within three working days and shall make a written
8 report of its findings including the results of any water quality
9 measurements, photographs, or other pertinent information. Within
10 twenty days of receiving a written complaint, a copy of the findings
11 shall be provided to the dairy producer subject to the complaint, and
12 to the complainant if the person gave his or her name and address to
13 the department at the time the complaint was filed.

14 (3) The department may consider past complaints against the same
15 dairy farm from the same person and the results of its previous
16 inspections, and has the discretion to decide whether to conduct an
17 inspection if:

18 (a) The same or a similar complaint or complaints have been filed
19 against the same dairy farm within the immediately preceding six-month
20 period; and

21 (b) The department made a determination that the activity that was
22 the subject of the prior complaint was not a violation.

23 (4) If the decision of the department is not to conduct an
24 inspection, it shall document the decision and the reasons for the
25 decision within twenty days. The department shall provide the decision
26 to the complainant if the name and address were provided to the
27 department, and to the dairy producer subject to the complaint, and the
28 department shall place the decision in the department's administrative
29 records.

30 (5) The report of findings of any inspection conducted as the
31 result of either an oral or a written complaint shall be placed in the
32 department's administrative records. Only findings of violations shall
33 be entered into the data base identified in RCW 90.64.130.

34 (6) A dairy farm that is determined to be a significant contributor
35 of pollution based on actual water quality tests, photographs, or other
36 pertinent information is subject to the provisions of this chapter and
37 to the enforcement provisions of chapters 43.05 and 90.48 RCW,
38 including civil penalties levied under RCW 90.48.144.

1 (7) If the department determines that an unresolved water quality
2 problem from a dairy farm requires immediate corrective action, the
3 department shall notify the producer and the district in which the
4 problem is located. When corrective actions are required to address
5 such unresolved water quality problems, the department shall provide
6 copies of all final dairy farm inspection reports and documentation of
7 all formal regulatory and enforcement actions taken by the department
8 against that particular dairy farm to the local conservation district
9 and to the appropriate dairy farm within twenty days.

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

14 (9) A discharge, including a storm water discharge, to surface
15 waters of the state shall not be considered a violation of this
16 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
17 therefore not be enforceable by the department of ecology or a third
18 party, if at the time of the discharge, a violation is not occurring
19 under RCW 90.64.010(18). In addition, a dairy producer shall not be
20 held liable for violations of this chapter, chapter 90.48 RCW, chapter
21 173-201A WAC, or the federal clean water act due to the discharge of
22 dairy nutrients to waters of the state resulting from spreading these
23 materials on lands other than where the nutrients were generated, when
24 the nutrients are spread by persons other than the dairy producer or
25 the dairy producer's agent.

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

30 (11) This section specifically acknowledges that if a holder of a
31 general or individual national pollutant discharge elimination system
32 permit complies with the permit and the dairy nutrient management plan
33 conditions for appropriate land application practices, the permit
34 provides compliance with the federal clean water act and acts as a
35 shield against citizen or agency enforcement for any additions of
36 pollutants to waters of the state or of the United States as authorized
37 by the permit.

1 (12) A dairy producer who fails to have an approved dairy nutrient
2 management plan by July 1, 2002, or a certified dairy nutrient
3 management plan by December 31, 2003, and for which no appeals have
4 been filed with the pollution control hearings board, is in violation
5 of this chapter. Each month beyond these deadlines that a dairy
6 producer is out of compliance with the requirement for either plan
7 approval or plan certification shall be considered separate violations
8 of chapter 90.64 RCW that may be subject to penalties. Such penalties
9 may not exceed one hundred dollars per month for each violation up to
10 a combined total of five thousand dollars. The department has
11 discretion in imposing penalties for failure to meet deadlines for plan
12 approval or plan certification if the failure to comply is due to lack
13 of state funding for implementation of the program. Failure to
14 register as required in RCW 90.64.017 shall subject a dairy producer to
15 a maximum penalty of one hundred dollars. Penalties shall be levied by
16 the department.

17 **Sec. 4.** RCW 90.64.120 and 1993 c 221 s 13 are each amended to read
18 as follows:

19 (1) Nothing in this chapter shall affect the ((department's))
20 department of ecology's authority or responsibility to administer or
21 enforce the national pollutant discharge elimination system permits for
22 operators of concentrated dairy animal feeding operations, where
23 required by federal regulations or to administer the provisions of
24 chapter 90.48 RCW.

25 (2) Unless the department of ecology delegates its authority under
26 chapter 90.48 RCW to the department of agriculture pursuant to RCW
27 90.48.260, and until any such delegation of authority receives federal
28 approval, the transfer specified in section 6 of this act shall not
29 preclude the department of ecology from taking action related to animal
30 feeding operations or concentrated animal feeding operations to protect
31 water quality pursuant to its authority in chapter 90.48 RCW. Before
32 taking such actions, the department of ecology shall notify the
33 department of agriculture.

34 **Sec. 5.** RCW 90.64.150 and 1998 c 262 s 15 are each amended to read
35 as follows:

36 The ((dairy waste)) livestock nutrient management account is

1 created in the custody of the state treasurer. All receipts from
2 monetary penalties levied pursuant to violations of this chapter must
3 be deposited into the account. Expenditures from the account may be
4 used only (~~for the commission~~) to provide grants (~~to local~~
5 ~~conservation districts for the sole purpose of assisting dairy~~
6 ~~producers to develop and fully implement dairy nutrient management~~
7 ~~plans~~) for research or education proposals that assist livestock
8 operations to achieve compliance with state and federal water quality
9 laws. The director of agriculture shall accept and prioritize research
10 proposals and education proposals. Only the (~~chairman of the~~
11 ~~commission~~) director or the (~~chairman's~~) director's designee may
12 authorize expenditures from the account. The account is subject to
13 allotment procedures under chapter 43.88 RCW, but an appropriation is
14 not required for expenditures.

15 NEW SECTION. Sec. 6. A new section is added to chapter 90.64 RCW
16 to read as follows:

17 (1) All powers, duties, and functions of the department of ecology
18 pertaining to chapter 90.64 RCW are transferred to the department of
19 agriculture. All references to the director of ecology or the
20 department of ecology in the Revised Code of Washington shall be
21 construed to mean the director of agriculture or the department of
22 agriculture when referring to the functions transferred in this
23 section.

24 (2)(a) All reports, documents, surveys, books, records, files,
25 papers, or written material in the possession of the department of
26 ecology pertaining to the powers, functions, and duties transferred
27 shall be delivered to the custody of the department of agriculture.
28 All cabinets, furniture, office equipment, motor vehicles, and other
29 tangible property employed by the department of ecology in carrying out
30 the powers, functions, and duties transferred shall be made available
31 to the department of agriculture. All funds, credits, or other assets
32 held in connection with the powers, functions, and duties transferred
33 shall be assigned to the department of agriculture.

34 (b) Any appropriations made to the department of ecology for
35 carrying out the powers, functions, and duties transferred shall, on
36 the effective date of this section, be transferred and credited to the
37 department of agriculture.

1 (c) Whenever any question arises as to the transfer of any funds,
2 books, documents, records, papers, files, equipment, or other tangible
3 property used or held in the exercise of the powers and the performance
4 of the duties and functions transferred, the director of financial
5 management shall make a determination as to the proper allocation and
6 certify the same to the state agencies concerned.

7 (3) All rules and all pending business before the department of
8 ecology pertaining to the powers, functions, and duties transferred
9 shall be continued and acted upon by the department of agriculture.
10 All existing contracts and obligations shall remain in full force and
11 shall be performed by the department of agriculture.

12 (4) The transfer of the powers, duties, and functions of the
13 department of ecology shall not affect the validity of any act
14 performed before the effective date of this section.

15 (5) If apportionments of budgeted funds are required because of the
16 transfers directed by this section, the director of financial
17 management shall certify the apportionments to the agencies affected,
18 the state auditor, and the state treasurer. Each of these shall make
19 the appropriate transfer and adjustments in funds and appropriation
20 accounts and equipment records in accordance with the certification.

21 **Sec. 7.** RCW 90.48.260 and 1988 c 220 s 1 are each amended to read
22 as follows:

23 The department of ecology is hereby designated as the State Water
24 Pollution Control Agency for all purposes of the federal clean water
25 act as it exists on February 4, 1987, and is hereby authorized to
26 participate fully in the programs of the act as well as to take all
27 action necessary to secure to the state the benefits and to meet the
28 requirements of that act. With regard to the national estuary program
29 established by section 320 of that act, the department shall exercise
30 its responsibility jointly with the Puget Sound water quality
31 authority. The department of ecology may delegate its authority under
32 this chapter, including its national pollutant discharge elimination
33 permit system authority and duties regarding animal feeding operations
34 and concentrated animal feeding operations, to the department of
35 agriculture through a memorandum of understanding. Until any such
36 delegation receives federal approval, the department of agriculture's
37 adoption or issuance of animal feeding operation and concentrated

1 animal feeding operation rules, permits, programs, and directives
2 pertaining to water quality shall be accomplished after reaching
3 agreement with the director of the department of ecology. Adoption or
4 issuance and implementation shall be accomplished so that compliance
5 with such animal feeding operation and concentrated animal feeding
6 operation rules, permits, programs, and directives will achieve
7 compliance with all federal and state water pollution control laws.

8 The powers granted herein include, among others, and notwithstanding
9 any other provisions of chapter 90.48 RCW or otherwise, the following:

10 (1) Complete authority to establish and administer a comprehensive
11 state point source waste discharge or pollution discharge elimination
12 permit program which will enable the department to qualify for full
13 participation in any national waste discharge or pollution discharge
14 elimination permit system and will allow the department to be the sole
15 agency issuing permits required by such national system operating in
16 the state of Washington subject to the provisions of RCW 90.48.262(2).

17 Program elements authorized herein may include, but are not limited
18 to: (a) Effluent treatment and limitation requirements together with
19 timing requirements related thereto; (b) applicable receiving water
20 quality standards requirements; (c) requirements of standards of
21 performance for new sources; (d) pretreatment requirements; (e)
22 termination and modification of permits for cause; (f) requirements for
23 public notices and opportunities for public hearings; (g) appropriate
24 relationships with the secretary of the army in the administration of
25 his responsibilities which relate to anchorage and navigation, with the
26 administrator of the environmental protection agency in the performance
27 of his duties, and with other governmental officials under the federal
28 clean water act; (h) requirements for inspection, monitoring, entry,
29 and reporting; (i) enforcement of the program through penalties,
30 emergency powers, and criminal sanctions; (j) a continuing planning
31 process; and (k) user charges.

32 (2) The power to establish and administer state programs in a
33 manner which will insure the procurement of moneys, whether in the form
34 of grants, loans, or otherwise; to assist in the construction,
35 operation, and maintenance of various water pollution control
36 facilities and works; and the administering of various state water
37 pollution control management, regulatory, and enforcement programs.

1 (3) The power to develop and implement appropriate programs
2 pertaining to continuing planning processes, area-wide waste treatment
3 management plans, and basin planning.

4 The governor shall have authority to perform those actions required
5 of him or her by the federal clean water act.

6 NEW SECTION. **Sec. 8.** Such actions as are necessary to make the
7 appointments to the committee created in section 2 of this act shall be
8 taken before July 1, 2003, to make the appointments on that date.

9 NEW SECTION. **Sec. 9.** Sections 2 and 6 of this act are necessary
10 for the immediate preservation of the public peace, health, or safety,
11 or support of the state government and its existing public
12 institutions, and take effect July 1, 2003.

Passed by the Senate April 26, 2003.

Passed by the House April 26, 2003.

Approved by the Governor May 16, 2003.

Filed in Office of Secretary of State May 16, 2003.