

**RCW 90.64.030 Investigation of dairy farms—Report of findings—
Corrective action—Violations of water quality laws—Waivers—
Penalties.**

(1) Under the inspection program established in RCW 90.64.023, the department may investigate a dairy farm to determine whether the operation is discharging pollutants or has a record of discharging pollutants into surface or ground waters of the state. Upon concluding an investigation, the department shall make a written report of its findings, including the results of any water quality measurements, photographs, or other pertinent information, and provide a copy of the report to the dairy producer within twenty days of the investigation.

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

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

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

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

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

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

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

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

(8) For a violation of water quality laws that is a first offense for a dairy producer, the penalty may be waived to allow the producer

to come into compliance with water quality laws. The department shall record all legitimate violations and subsequent enforcement actions.

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

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

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

(12) A dairy producer who fails to have an approved dairy nutrient management plan by July 1, 2002, or a certified dairy nutrient management plan by December 31, 2003, and for which no appeals have been filed with the pollution control hearings board, is in violation of this chapter. Each month beyond these deadlines that a dairy producer is out of compliance with the requirement for either plan approval or plan certification shall be considered separate violations of chapter 90.64 RCW that may be subject to penalties. Such penalties may not exceed one hundred dollars per month for each violation up to a combined total of five thousand dollars. The department has discretion in imposing penalties for failure to meet deadlines for plan approval or plan certification if the failure to comply is due to lack of state funding for implementation of the program. Failure to register as required in RCW 90.64.017 shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department. [2011 c 103 § 3; 2003 c 325 § 3; 2002 c 327 § 1; 1998 c 262 § 11; 1993 c 221 § 4.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Intent—Finding—2003 c 325: "A livestock nutrient management program is essential to ensuring a healthy and productive livestock industry in Washington state. The goal of the program must be to provide clear guidance to livestock farms as to their responsibilities under state and federal law to protect water quality while maintaining a healthy business climate for these farms. The program should develop reasonable financial assistance resources, educational and technical assistance to meet these responsibilities, and provide for periodic inspection and enforcement actions to ensure compliance with state and federal water quality laws. The legislature intends that by 2006,

there will be a fully functioning state program for concentrated animal feeding operations in the state, and that this program will be a single program for all livestock sectors.

The legislature finds that a livestock nutrient management program is necessary to address the federal rule changes with which livestock operations must comply. Furthermore, budgetary conditions demand efficient and effective governance. In addition, many of the existing requirements and goals for dairy farms will be completed by December 2003, and revisions will be needed." [2003 c 325 § 1.]