

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5849

53rd Legislature
1993 Regular Session

Passed by the Senate April 18, 1993
YEAS 41 NAYS 0

President of the Senate

Passed by the House April 12, 1993
YEAS 92 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5849** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5849

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senate Committee on Agriculture (originally sponsored by Senators M. Rasmussen, Erwin, McAuliffe, Roach, Anderson, Bauer, Barr, Amondson and Loveland)

Read first time 03/03/93.

1 AN ACT Relating to the regulation of dairy animal feeding
2 operations; and adding a new chapter to Title 90 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that there is a need
5 to establish a clear and understandable process that provides for the
6 proper and effective management of dairy waste that affects the quality
7 of surface or ground waters in the state of Washington. The
8 legislature finds that there is a need for a program that will provide
9 a stable and predictable business climate upon which dairy farms may
10 base future investment decisions.

11 The legislature finds that federal regulations require a permit
12 program for dairies over seven hundred head of mature cows and, other
13 specified dairy farms that directly discharge into waters or are
14 otherwise significant contributors of pollution. The legislature finds
15 that significant work has been ongoing over a period of time and that
16 the intent of this chapter is to take the consensus that has been
17 developed and place it into statutory form.

18 It is also the intent of this chapter to recognize the existing
19 working relationships between conservation districts, the conservation

1 commission, and the department of ecology in protecting water quality
2 of the state. A further purpose of this chapter is to provide
3 statutory recognition of the coordination of the functions of
4 conservation districts, the conservation commission, and the department
5 of ecology pertaining to development of dairy waste management plans
6 for the protection of water quality.

7 NEW SECTION. **Sec. 2.** Unless the context clearly requires
8 otherwise, the definitions in this section apply throughout this
9 chapter.

10 (1) "Conservation commission" or "commission" means the
11 conservation commission under chapter 89.08 RCW.

12 (2) "Conservation districts" or "district" means a subdivision of
13 state government organized under chapter 89.08 RCW.

14 (3) "Concentrated dairy animal feeding operation" means a dairy
15 animal feeding operation subject to regulation under this chapter which
16 the director designates under section 4 of this act or meets the
17 following criteria:

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

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

22 (i) From which pollutants are discharged into navigable waters
23 through a manmade ditch, flushing system, or other similar manmade
24 device; or

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

29 (4) "Dairy animal feeding operation" means a lot or facility where
30 the following conditions are met;

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

34 (b) Crops, vegetation forage growth, or postharvest residues are
35 not sustained in the normal growing season over any portion of the lot
36 or facility. Two or more dairy animal feeding operations under common
37 ownership are considered, for the purposes of this chapter, to be a

1 single dairy animal feeding operation if they adjoin each other or if
2 they use a common area for land application of wastes.

3 (5) "Department" means the department of ecology under chapter
4 43.21A RCW.

5 (6) "Director" means the director of the department of ecology, or
6 his or her designee.

7 NEW SECTION. **Sec. 3.** (1) The director of the department of
8 ecology may designate any dairy animal feeding operation as a
9 concentrated dairy animal feeding operation upon determining that it is
10 a significant contributor of pollution to the surface or ground waters
11 of the state. In making this designation the director shall consider
12 the following factors:

13 (a) The size of the animal feeding operation and the amount of
14 wastes reaching waters of the state;

15 (b) The location of the animal feeding operation relative to waters
16 of the state;

17 (c) The means of conveyance of animal wastes and process waters
18 into the waters of the state;

19 (d) The slope, vegetation, rainfall, and other factors affecting
20 the likelihood or frequency of discharge of animal wastes and process
21 waste waters into the waters of the state; and

22 (e) Other relevant factors as established by the department by
23 rule.

24 (2) A notice of intent to apply for a permit shall not be required
25 from a concentrated dairy animal feeding operation designated under
26 this section until the director has conducted an on-site inspection of
27 the operation and determined that the operation should and could be
28 regulated under the permit program.

29 NEW SECTION. **Sec. 4.** Upon receiving a complaint or upon its own
30 determination that a dairy animal feeding operation is a likely source
31 of water quality degradation, the department may investigate a dairy
32 animal feeding operation to determine whether the operation is
33 discharging directly pollutants or recently has discharged directly
34 pollutants into surface or ground waters of the state. The department
35 shall investigate a written complaint filed with the department within
36 ten days and shall make a written report of its findings including the
37 results of any water quality measurements, photographs, or other

1 pertinent information. A copy of the findings shall be provided upon
2 request to the dairy animal feeding operation.

3 Those dairy animal feeding operations that are determined to be a
4 significant contributor of pollution based on actual water quality
5 tests, photographs, or other pertinent information if immediate
6 corrective actions are not possible, shall be designated as a
7 concentrated dairy animal feeding operation and shall be subject to the
8 provisions of this chapter.

9 NEW SECTION. **Sec. 5.** Enforcement actions and administrative
10 orders issued by the department of ecology may be appealed to the
11 pollution control hearings board in accordance with the provisions of
12 chapter 43.21B RCW.

13 NEW SECTION. **Sec. 6.** (1) The department has the following duties:

14 (a) Identify existing or potential water quality problems resulting
15 from dairy farms;

16 (b) Receive, process, and verify complaints concerning discharge of
17 pollutants from all dairy farms regardless of size;

18 (c) Determine if a dairy-related water quality problem requires
19 immediate corrective action under the Washington state water pollution
20 control laws, chapter 90.48 RCW, the Washington state water quality
21 standards adopted under chapter 90.48 RCW, or other authorities. The
22 department shall maintain the lead enforcement responsibility;

23 (d) Administer and enforce national pollutants discharge
24 elimination system permits for operators of concentrated dairy animal
25 feeding operations, where required by federal regulations, and
26 administer state laws;

27 (e) Appoint representatives, including dairy industry
28 representatives, to participate in the compliance review committee that
29 will annually review and update policy and disseminate information as
30 needed;

31 (f) Encourage communication between local department personnel and
32 the appropriate conservation district personnel;

33 (g) Encourage the use of federal soil conservation service
34 standards and specifications in designing best management practices for
35 dairy waste management plans to protect water quality;

36 (h) Provide to the commission an annual report of dairy waste
37 pollution enforcement activities.

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

3 NEW SECTION. **Sec. 7.** (1) If the department determines that the
4 operator of a dairy animal feeding operation has the means to correct
5 a water quality problem in a manner that will prevent future
6 contamination and does so promptly and such correction is maintained,
7 the department shall cease pursuit of the complaint.

8 (2) If the department determines that an unresolved water quality
9 problem from a dairy animal feeding operation requires immediate
10 corrective action, the department shall notify the operator and the
11 district in which the problem is located.

12 (3) If immediate action is not necessary by the department, the
13 handling of complaints will differ depending on the amount of
14 information available and the compliance option selected by the
15 conservation district involved.

16 (a) When the name and address of the party against whom the
17 complaint was registered are known:

18 (i) Districts operating at levels 1 and 2 will receive a copy of
19 complaint information, and compliance letter if one was sent out.

20 (ii) Districts operating at levels 3 and 4 will receive a copy of
21 complaint information and the letter sent by the department to the
22 operator informing the operator of the complaint and providing the
23 operator with the opportunity to work with the conservation district on
24 a voluntary basis.

25 (b) The department and the conservation district will work together
26 at the local level to resolve complaints when the name and address of
27 the party against whom the complaint was registered are unknown.

28 NEW SECTION. **Sec. 8.** (1) The conservation district has the
29 following duties:

30 (a) Adopt and annually update the water quality section in the
31 conservation district dairy waste management plan;

32 (b) As part of the district annual report, include a water quality
33 progress report on dairy waste management activities conducted that are
34 related to this chapter;

35 (c) Encourage communication between the conservation district
36 personnel and local department personnel;

1 (d) Adopt and carry out a compliance option from level 1, level 2,
2 level 3, or level 4.

3 (2) The district's capability to carry out its responsibilities in
4 the four levels of compliance is contingent upon the availability of
5 funding and resources to implement a dairy waste management program.

6 NEW SECTION. **Sec. 9.** (1) The conservation commission has the
7 following duties:

8 (a) Forward to the department the dairy waste management plan
9 progress reports;

10 (b) Provide assistance as may be appropriate to the conservation
11 districts in the discharge of their responsibilities as management
12 agencies in dairy waste management program implementation;

13 (c) Provide coordination for conservation district programs at the
14 state level through special arrangements with appropriate federal and
15 state agencies;

16 (d) Inform conservation districts of activities and experiences of
17 other conservation districts relative to agricultural water quality
18 protection, and facilitate an interchange of advice, experience, and
19 cooperation between the districts;

20 (e) Encourage communication between the conservation district
21 personnel and local department personnel;

22 (f) Appoint conservation district representatives to serve on the
23 compliance review committee with advice of the Washington association
24 of conservation districts;

25 (g) Appoint a commission representative to participate on the
26 compliance review committee that will annually review and update policy
27 and disseminate information as needed;

28 (h) Work with the department to provide communication outreach to
29 representatives of agricultural and environmental organizations to
30 receive feed back on implementation of this chapter.

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

34 NEW SECTION. **Sec. 10.** Conservation districts shall adopt one of
35 the following compliance levels:

36 (1) Level 1 - Information/education/technical assistance.

1 The conservation district will serve as a local source of
2 information on dairy waste management plan implementation programs.
3 The conservation district will promote plans and efforts to improve
4 water quality and explain the benefits of participating in available
5 implementation plans through news releases and other media for the
6 general public; programs for schools; presentations to groups and civic
7 organizations; workshops; training sessions; or other appropriate
8 means. The conservation district will provide technical assistance
9 upon request.

10 The department will respond to complaints that involve water
11 quality problems caused by dairy animal feeding operations. The
12 department will work with the operator to bring the operation into
13 compliance with federal statutes, federal regulations, and applicable
14 state laws. If immediate action is deemed necessary, the department
15 will pursue the appropriate actions that may include enforcement
16 against the responsible parties. The department will advise the
17 operator of the information and technical assistance available through
18 the conservation district. The department will notify the conservation
19 district of the operator's need for information or technical
20 assistance.

21 (2) Level 2 - Information/education, problem assessment, and
22 handling complaints.

23 The conservation district will carry out programs described in
24 level 1. In addition, the conservation district will inventory dairy
25 waste related water quality problems defined in the water quality
26 section of its annual plan. The conservation district will prioritize
27 problems and work to apply voluntary solutions to the highest priority
28 problems within available resources utilizing information/education,
29 technical assistance, and incentives. Response to complaint - The
30 conservation district will make an appointment for an on-site contact
31 with the alleged violator within ten working days and determine if the
32 operator desires to work with the conservation district. If the
33 operator wishes conservation district assistance, within six months the
34 conservation district will develop a plan with the individual operator
35 which includes a schedule for application of best management practices.
36 The operator will have eighteen months, or by agreement, an approved
37 schedule with an alternative time period to implement the plan. If
38 hardships occur, the operator may request an extension of the
39 implementation schedule subject to concurrence of the department.

1 The conservation district in responding to complaints will report
2 progress, or the need for further department technical expertise, to
3 the individual involved and the department. A copy of the plan will be
4 made available to the department. If the district offers assistance
5 and the individual involved refuses to cooperate or ceases to work with
6 the conservation district, the district will notify the department.

7 The conservation district will refer all alleged water quality
8 violations, or individuals who wish to make a complaint to the
9 department.

10 The department will investigate and seek resolution of all
11 complaints that appear to need immediate action and refer all other
12 complaints concerning dairy animal feeding operations to the
13 appropriate conservation district. The department will keep a record
14 of those complaints. When a referral is made by a conservation
15 district, due to a continuing unresolved water quality problem, the
16 department will take appropriate action and advise the conservation
17 district of the action taken.

18 (3) Level 3 - Information/education, problem assessment, handling
19 complaints, and assisting in compliance.

20 The conservation district will carry out programs described in
21 levels 1 and 2. In addition, the conservation district will actively
22 follow up those problems and complaints deemed highest priority by the
23 conservation district within sixty days after the initial contact. The
24 complaint referral follow-up will include:

25 (a) Meet with the owner/operator;

26 (b) Make an on-site assessment of the nature and extent of the
27 problem, if so desired by the owner/operator;

28 (c) Notify within twenty-five working days the department that the
29 owner/operator has or has not requested assistance from the
30 conservation district;

31 (d) Assist the owner/operator in the development of a dairy waste
32 management plan within six months. Implementation is to be completed
33 within eighteen months, or by agreement and approved schedule, with an
34 alternative time period to implement the plan. If hardships occur, the
35 operator may request an extension of the planning or implementation
36 schedule with concurrence of the department;

37 (e) Provide such technical assistance as is necessary and available
38 during plan implementation;

39 (f) Monitor plan implementation;

1 (g) Notify the department within twenty-five working days in the
2 event that the owner/operator either refuses to cooperate in the
3 development of a dairy waste management plan that will correct the
4 problems identified during the on-site assessment, or fails to
5 implement the plan within the designated time period;

6 (h) By June 30 of each year, submit a formal summary of progress on
7 alleged water quality violations referred to the conservation district
8 by the department.

9 The department will investigate and seek resolution of all
10 complaints that appear to need immediate action.

11 The department will pursue all activities addressed under level 2.
12 Except that on those sites where the conservation district is making
13 progress on water quality problems caused from dairy animal feeding
14 operations and is reporting the same to the department, the department
15 will hold any related enforcement actions in abeyance until the problem
16 is solved, or the operator refuses to cooperate further. The
17 department shall continue to pursue any immediate action where
18 required.

19 (4) Level 4 - Compliance.

20 The conservation district will carry out programs described in
21 levels 1 through 3. In addition, the conservation district will
22 provide information and direct support for resolving water quality
23 actions which may be filed by the department pursuant to its statutory
24 authority.

25 Information and support include the following:

26 (a) A field site tour to provide information and attempt to resolve
27 the issues;

28 (b) Provision for access to public information in a conservation
29 district's files, and if appropriate, in-house documents such as field
30 notes, photographs, and in-house memoranda. Access is subject to
31 applicable laws and regulations;

32 (c) Department interviews with appropriate conservation district
33 personnel regarding a site under enforcement;

34 (d) Assistance and attendance, if appropriate, at negotiation
35 sessions with responsible parties;

36 (e) Affidavits or testimony necessary to document the case.

37 The department will pursue all activities as addressed in level 3,
38 except where the conservation district has been involved, the

1 department will utilize the information and support offered by the
2 conservation district to resolve the matter.

3 NEW SECTION. **Sec. 11.** A party acting under this chapter is not
4 liable for another party's actions under this chapter.

5 NEW SECTION. **Sec. 12.** The department may adopt rules as necessary
6 to implement this chapter.

7 NEW SECTION. **Sec. 13.** Nothing in this chapter shall affect the
8 department's authority or responsibility to administer or enforce the
9 national pollutant discharge elimination system permits for operators
10 of concentrated dairy animal feeding operations, where required by
11 federal regulations or to administer the provisions of chapter 90.48
12 RCW.

13 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act shall
14 constitute a new chapter in Title 90 RCW.

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