

1 **2SHB 2915** - H AMD

2 By Representative Chandler

3 On page 1, strike everything after the enacting clause and insert
4 the following

5 "Sec. 1. RCW 90.64.005 and 1993 c 221 s 1 are each amended to
6 read as follows:

7 The legislature finds that there is a need to establish a clear
8 and understandable process that provides for the proper and effective
9 management of dairy ((waste)) nutrients that affect((s)) the quality of
10 surface or ground waters in the state of Washington. The legislature
11 finds that there is a need for a program that will provide a stable and
12 predictable business climate upon which dairy farms may base future
13 investment decisions.

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

21 It is also the intent of this chapter to establish an inspection
22 and technical assistance program for dairy farms to address the
23 discharge of pollution to surface and ground waters of the state that
24 will lead to water quality compliance by the industry. A further
25 purpose is to create a balanced program involving technical assistance,
26 regulation, and enforcement with coordination and oversight of the
27 program by a committee composed of industry, agency, and other
28 representatives. Furthermore, it is the objective of this chapter to
29 maintain the administration of the water quality program as it relates
30 to dairy operations at the state level.

31 It is also the intent of this chapter to recognize the existing
32 working relationships between conservation districts, the conservation
33 commission, and the department of ecology in protecting water quality
34 of the state. A further purpose of this chapter is to provide
35 statutory recognition of the coordination of the functions of
36 conservation districts, the conservation commission, and the department

1 of ecology pertaining to development of dairy waste management plans
2 for the protection of water quality.

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

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

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

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

14 (3) "Certification" means:

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

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

21 (4) "Chronic" means a series of wet weather events that precludes
22 the proper operation of a dairy nutrient management system that is
23 designed with adequate volume for the current herd size and is also
24 properly maintained.

25 (5) "Conservation commission" or "commission" means the
26 conservation commission under chapter 89.08 RCW.

27 ~~((+2))~~ (6) "Conservation districts" or "district" means a
28 subdivision of state government organized under chapter 89.08 RCW.

29 ~~((+3))~~ (7) "Concentrated dairy animal feeding operation" means a
30 dairy animal feeding operation subject to regulation under this chapter
31 which the director designates under RCW 90.64.~~((+30))~~020 or meets the
32 following criteria:

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

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

1 (i) From which pollutants are discharged into navigable waters
2 through a manmade ditch, flushing system, or other similar manmade
3 device; or

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

8 ~~((+4))~~ (8) "Dairy animal feeding operation" means a lot or
9 facility where the following conditions are met:

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

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

19 ~~((+5))~~ (9) "Dairy farm" means any farm that is licensed to
20 produce milk under chapter 15.36 RCW.

21 (10) "Dairy nutrient" means any organic waste produced by dairy
22 cows or a dairy farm operation.

23 (11) "Dairy nutrient management plan" means a plan meeting the
24 requirements established under section 5 of this act.

25 (12) "Dairy nutrient management technical assistance team" means
26 one or more professional engineers and local conservation district
27 employees convened to serve one of up to four distinct geographic areas
28 in the state.

29 (13) "Dairy producer" means a person who owns or operates a dairy
30 farm.

31 (14) "Department" means the department of ecology under chapter
32 43.21A RCW.

33 ~~((+6))~~ (15) "Director" means the director of the department of
34 ecology, or his or her designee.

35 (16) "Upset" means an exceptional incident in which there is an
36 unintentional and temporary noncompliance because of factors beyond the
37 reasonable control of the dairy.

1 (17) "Violation" means a discharge of pollutants into the waters
2 of the state, except those discharges that are regulated under the
3 terms of a national pollutant discharge elimination system permit and
4 that are:

5 (i) caused by a 24-hour, twenty-five year or greater storm event,
6 or by catastrophic or chronic weather events; or

7 (ii) the result of practices that are approved in a certified
8 dairy nutrient management plan, or that are likely to be approved in
9 such a plan no later than December 1, 2000.

10 NEW SECTION. Sec. 3. (1) Every dairy producer licensed under
11 chapter 15.36 RCW shall register with the department by September 1,
12 1998, and shall reregister with the department by September 1st of
13 every even-numbered year. Every dairy producer licensed after
14 September 1, 1998, shall register with the department within sixty days
15 of licensing.

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

21 (3) At a minimum, the form shall require the following
22 information:

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

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

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

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

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

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

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

33 (h) If the fields where dairy nutrients are being applied belong
34 to someone other than the dairy producer whose farm operation generated
35 the nutrients, the name, address, and telephone number of the owners of
36 the property accepting the dairy nutrients shall be included in the
37 registration form. *Of this information, the department shall only*

1 *require the registrant to provide information that is not already*
2 *available from other sources accessible to the department, such as*
3 *dairy licensing information.*

4 (4) In the mailing to dairy producers containing the registration
5 form, the department shall also provide information regarding the
6 requirements of this chapter in a manner that is clear and
7 comprehensive.

8 (5) The department's failure to reach a dairy producer by mail
9 shall not alter the obligation of the producer to register with the
10 department within the time required.

11 (6) Failure of a dairy producer to register with the department is
12 a violation of this chapter.

13 NEW SECTION. **Sec. 4.** Prior to October 1, 1998, the department
14 and conservation commission shall jointly sponsor and hold an
15 educational workshop for conservation districts from around the state.
16 The purpose of the workshop is to inform local conservation districts
17 about the requirements of this chapter, and for local conservation
18 districts, the conservation commission, and the department to clearly
19 understand their respective roles and responsibilities in carrying out
20 these requirements.

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

24 (a) Survey for evidence of significant dairy nutrient discharges;

25 (b) Identify corrective actions for actual or imminent discharges
26 that threaten to violate the state's water quality *requirements*;

27 (c) *Monitor the development of dairy nutrient management plans*;
28 and

29 (d) Identify dairy producers who would benefit from technical
30 assistance programs.

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

34 (3) Follow-up inspections shall be conducted by the department to
35 ensure that corrective and other actions as identified in the course of
36 initial inspections are being carried out. The department shall also

1 conduct such additional inspections as are necessary to ensure
2 compliance with state and federal water quality requirements, provided
3 that all licensed dairy farms shall be inspected once within two years
4 of the start of this program. *The department, in consultation with the*
5 *advisory and oversight committee, shall develop performance-based*
6 *criteria to determine the frequency of inspections.*

7 NEW SECTION. **Sec. 6.** (1) All dairy producers licensed under
8 chapter 15.36 RCW shall prepare a dairy nutrient management plan. Such
9 plans shall be *submitted for approval to the local conservation*
10 *district where the dairy farm is located for approval by July 1, 1999,*
11 *and shall be certified and fully implemented by October 1, 2001. If a*
12 *plan meets the requirements identified in subsection (2) of this*
13 *section, a conservation district shall approve the plan.*

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

19 (3) In developing the elements that an approved dairy nutrient
20 management plan must contain, the commission *may authorize the use of*
21 *methods and technologies other than those developed by the natural*
22 *resources conservation service, provided that, once implemented, such*
23 *methods and technologies achieve compliance with water quality*
24 *requirements.*

25 (4) An approved plan shall be certified by a conservation district
26 and a dairy producer when the elements necessary to implement the plan
27 have been constructed or otherwise put in place, and are being used as
28 designed and intended. A certification form shall be developed by the
29 conservation commission for use state-wide and shall provide for a
30 signature by both a conservation district representative and a dairy
31 producer. Signed certification forms shall be dated by October 1,
32 2001, and a copy provided to the department.

33 NEW SECTION. **Sec. 7.** *Dairy nutrient management plans shall be*
34 *considered orders of the department and shall be subject to appeal to*
35 *the pollution control hearing board according to the procedure in*
36 *chapter 43.21B RCW.*

1 NEW SECTION. **Sec. 8.** (1) A dairy nutrient management program
2 advisory and oversight committee is established. The committee shall
3 be co-chaired by the executive director of the conservation commission
4 and a dairy industry representative. The purpose of the committee is
5 to provide direction to and oversight of the dairy nutrient management
6 inspection program, as well as to encourage the use of appropriate
7 alternative technologies and methods for managing dairy nutrient.
8 Members shall be appointed by the commission.

9 (2) *The committee shall include no less than eleven, and no more*
10 *than thirteen members, including one representative from the*
11 *department, one representative of the dairy industry from each of up to*
12 *four geographic areas as referenced in section 9, one representative*
13 *from the conservation commission, two representatives from local*
14 *conservation districts, one representative from a local health*
15 *department, one representative of an environmental organization, and*
16 *one representative from the shellfish industry. In addition, the*
17 *natural resources conservation service and the federal environmental*
18 *protection agency shall each be invited to appoint a representative to*
19 *the committee.*

20 (3) The committee shall perform the following functions:

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

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

25 (c) Review the quarterly data base summary and annual report
26 provided by the department under sections 8 and 11 of this act;

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

30 (e) *Review and recommend standardized dairy farm nutrient*
31 *management facility inspection procedures and a reporting format to be*
32 *used by the department; and*

33 (f) *Review and recommend dairy nutrient management technologies*
34 *and methods other than those approved or provided by the natural*
35 *resources conservation service, as components of nutrient management*
36 *plans under this chapter. In evaluating new technologies and methods,*
37 *the principal objective of the evaluation shall be determining whether*
38 *there is a substantial likelihood that, once implemented, the*

1 technologies and methods will achieve compliance with water quality
2 requirements.

3 (4) The advisory and oversight committee does not replace or
4 infringe upon the authority, duties, or responsibilities of the
5 pollution control hearings board.

6 NEW SECTION. **Sec. 9.** (1) By September 1, 1998, the department
7 in consultation with the advisory and oversight committee shall develop
8 and maintain a data base to account for the implementation of the
9 inspection program identified in section 5 of this act.

10 (2) The data base shall track registration; *inspection dates and*
11 *results, including findings of compliance and non-compliance with water*
12 *quality requirements; regulatory and enforcement actions; and the*
13 *status of dairy nutrient management plans. A summary of data base*
14 *information shall be provided quarterly to the advisory and oversight*
15 *committee.*

16 (3) *Complaints that have been filed with the department or*
17 *pollution control hearings board shall not be recorded into the data*
18 *base if, upon the conclusion of an investigation, they are found to be*
19 *without merit or basis. Any information entered into the data base by*
20 *the department about any aspect of a particular dairy operation may be*
21 *reviewed by the affected dairy producer upon request. The department*
22 *shall correct any information in the data base upon a showing that the*
23 *information is faulty or inaccurate.*

24 NEW SECTION. **Sec. 10.** (1) The conservation commission shall
25 establish up to four dairy nutrient management technical assistance
26 teams by May 1, 1998. The teams shall be geographically located
27 throughout the state. Each team shall consist of one or more
28 professional engineers, local conservation district employees, and
29 *representatives of county agricultural extension service offices.*

30 (2) By September 1, 1998, each team shall develop *one or more sets*
31 *of standards and specifications to assist dairy producers in developing*
32 *and implementing dairy nutrient management plans. Standards and*
33 *specifications developed by a technical assistance team shall be*
34 *appropriate to the soils and other conditions within that geographic*
35 *area and shall be reviewed by the advisory and oversight committee.*

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

3 ~~((Upon receiving a complaint or upon its own determination that a~~
4 ~~dairy animal feeding operation is a likely source of water quality~~
5 ~~degradation,))~~ (1) Under the inspection program established in section
6 5 of this act, the department may investigate a dairy ((animal feeding
7 operation)) farm to determine whether the operation is discharging
8 ((directly)) pollutants or ((recently)) has ((discharged directly)) a
9 record of discharging pollutants into surface or ground waters of the
10 state. Upon concluding an investigation, the department shall make a
11 written report of its findings, including the results of any water
12 quality measurements, photographs, or other pertinent information, and
13 provide a copy of the report to the dairy producer within twenty days
14 of the investigation.

15 (2) The department shall investigate a written complaint filed
16 with the department within ((ten)) three working days and shall make a
17 written report of its findings including the results of any water
18 quality measurements, photographs, or other pertinent information. A
19 copy of the findings shall be provided ((upon request)) to the dairy
20 ((animal feeding operation)) producer subject to the complaint within
21 twenty days. Only findings of non-compliance with water quality laws
22 shall be entered into the data base identified in section 9 of this
23 act.

24 ~~((Those dairy animal feeding operations that are))~~ (3) A dairy
25 farm that is determined to be a significant contributor of pollution
26 based on actual water quality tests, photographs, or other pertinent
27 information ((if immediate corrective actions are not possible, shall
28 be designated as a concentrated dairy animal feeding operation and
29 shall be)) is subject to the provisions of this chapter and to the
30 enforcement provisions of chapters 43.05 and 90.48 RCW, including civil
31 penalties levied under RCW 90.48.144.

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

36 (5) A discharge to surface waters of the state shall not be
37 considered a violation of chapter 90.48 RCW, chapter 173-201A WAC, or
38 a violation of the federal clean water act, and shall therefore not be

1 enforceable by the department of ecology or a third party, if at the
2 time of the discharge, the following conditions are met:

3 (a) The dairy producer has a current national pollution discharge
4 elimination system permit with a wastewater system designed, operated
5 and maintained for the current herd size to contain all process-
6 generated wastewater plus average annual precipitation minus
7 evaporation plus contaminated storm water runoff from a twenty-five
8 year, twenty-four-hour rainfall event for that specific location; and

9 (i) The discharge is due to a chronic or catastrophic event or is
10 due to an upset; or

11 (ii) The dairy producer has complied with the national pollution
12 discharge elimination system permit conditions or the dairy waste
13 management plan conditions regarding appropriate land application
14 practices.

15 (b) A dairy producer shall not be held liable for violations of
16 Chapter 90.48 RCW, chapter 173-201A or the federal clean water act due
17 to the discharge of dairy nutrients to waters of the state resulting
18 from spreading these materials on lands other than where the nutrients
19 were generated, when the nutrients are spread by persons other than the
20 dairy producer, employee or contractor.

21 (C) This section specifically acknowledges that if a national
22 pollution discharge elimination system permit holder complies with the
23 permit and the dairy waste management plan conditions for appropriate
24 land application practices, the permit provides compliance with the
25 federal clean water act and acts as a shield against citizen or agency
26 enforcement for any additions of pollutants to waters of the state or
27 of the United States that may occur. The department shall issue a
28 permit to any dairy farm of any size that applies for one.

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

31 (1) The department has the following duties:

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

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

1 (c) Determine if a dairy-related water quality problem requires
2 immediate corrective action under the Washington state water pollution
3 control laws, chapter 90.48 RCW, or the Washington state water quality
4 standards adopted under chapter 90.48 RCW(~~(, or other authorities)~~).
5 The department shall maintain the lead enforcement responsibility;

6 (d) Administer and enforce national pollutant(~~(s)~~) discharge
7 elimination system permits for operators of concentrated dairy animal
8 feeding operations and other dairy producers, where required by federal
9 regulations(~~(r)~~) and (~~(administer)~~) state laws or upon request of a
10 dairy producer;

11 (~~(Appoint representatives, including dairy industry~~
12 ~~representatives, to participate in the compliance review committee that~~
13 ~~will annually review and update policy and disseminate information as~~
14 ~~needed)~~) Participate on the advisory and oversight committee;

15 (f) Encourage communication and cooperation between local
16 department personnel and the appropriate conservation district
17 personnel;

18 (~~(Encourage)~~) Require the use of (~~(federal soil conservation~~
19 ~~service standards and specifications in designing best management~~
20 ~~practices for)~~) dairy (~~(waste)~~) nutrient management plans (~~(to protect~~
21 ~~water quality)~~) for entities required to plan under this chapter. Such
22 plans shall meet the standards and specifications of:

23 (i) The natural resource conservation service;

24 (ii) The natural resource conservation service as modified by the
25 geographically based standards developed under section 10 of this act;
26 or

27 (iii) A professional engineer with expertise in the area of dairy
28 nutrient management, soil science, or land application of biosolids or
29 liquids, provided these standards meet a goal of zero discharge of
30 pollutants;

31 (h) Provide to the commission and the advisory and oversight
32 committee an annual report of dairy (~~(waste pollution)~~) nutrient
33 management planning, inspection, and enforcement activities; and

34 (i) Oversee the conservation districts' review, approval, and
35 certification of dairy nutrient management plans.

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

1 **Sec. 13.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to
2 read as follows:

3 (1) If the department determines that the operator of a dairy
4 (~~(animal feeding operation)~~) has the means to correct a water quality
5 problem in a manner that will prevent future contamination and does so
6 promptly and such correction is maintained, the department shall cease
7 pursuit of the complaint. *If a discharge cannot be corrected promptly,*
8 *the department shall require the dairy producer to obtain a national*
9 *pollution discharge elimination system permit.*

10 (2) If the department determines that an unresolved water quality
11 problem from a dairy (~~(animal feeding operation)~~) farm requires
12 immediate corrective action, the department shall notify the
13 (~~(operator)~~) producer and the district in which the problem is located.
14 When corrective actions are required, the department shall provide
15 copies of all final dairy farm inspection reports and documentation of
16 all formal regulatory and enforcement actions taken by the department
17 to the local conservation district and to the appropriate dairy farm
18 within twenty days.

19 ~~((3) If immediate action is not necessary by the department, the~~
20 ~~handling of complaints will differ depending on the amount of~~
21 ~~information available and the compliance option selected by the~~
22 ~~conservation district involved.~~

23 ~~(a) When the name and address of the party against whom the~~
24 ~~complaint was registered are known:~~

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

27 ~~(ii) Districts operating at levels 3 and 4 will receive a copy of~~
28 ~~complaint information and the letter sent by the department to the~~
29 ~~operator informing the operator of the complaint and providing the~~
30 ~~operator with the opportunity to work with the conservation district on~~
31 ~~a voluntary basis.~~

32 ~~(b) The department and the conservation district will work~~
33 ~~together at the local level to resolve complaints when the name and~~
34 ~~address of the party against whom the complaint was registered are~~
35 ~~unknown.))~~

36 **Sec. 14.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to
37 read as follows:

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

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

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

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

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

18 (e) Review, approve, and certify dairy nutrient management plans
19 that meet the minimum standards developed under RCW 90.64.050(1)(g).

20 (2) The district's capability to carry out its responsibilities
21 (~~in the four levels of compliance~~) under this chapter is contingent
22 upon the availability of funding and resources to implement a dairy
23 (~~waste~~) nutrient management program.

24 **Sec. 15.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to
25 read as follows:

26 (1) The conservation commission has the following duties:

27 (a) (~~Forward to the department the dairy waste management plan~~
28 ~~progress reports;~~

29 ~~(b)~~) Provide assistance as may be appropriate to the conservation
30 districts in the discharge of their responsibilities as management
31 agencies in dairy (~~waste~~) nutrient management program implementation;

32 ~~(+e)~~) (b) Provide coordination for conservation district
33 programs at the state level through special arrangements with
34 appropriate federal and state agencies;

35 ~~(+d)~~) (c) Inform conservation districts of activities and
36 experiences of other conservation districts relative to agricultural

1 water quality protection, and facilitate an interchange of advice,
2 experience, and cooperation between the districts;

3 ~~((e))~~ (d) Encourage communication between the conservation
4 district personnel and local department personnel;

5 ~~((f))~~ (e) Appoint conservation district representatives to serve
6 on the ~~((compliance review))~~ advisory and oversight committee with
7 advice of the Washington association of conservation districts;

8 ~~((g) Appoint a commission representative to participate on the
9 compliance review committee that will annually review and update policy
10 and disseminate information as needed;~~

11 ~~(h))~~ (f) Provide a co-chair to the advisory and oversight
12 committee; and

13 (g) Work with the department to provide communication outreach to
14 representatives of agricultural and environmental organizations to
15 receive feedback on implementation of this chapter.

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

19 **Sec. 16.** RCW 90.48.144 and 1995 c 403 s 636 are each amended to
20 read as follows:

21 Except as provided in RCW 43.05.060 through 43.05.080 and
22 43.05.150, every person who:

23 (1) Violates the terms or conditions of a waste discharge permit
24 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

25 (2) Conducts a commercial or industrial operation or other point
26 source discharge operation without a waste discharge permit as required
27 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

28 (3) Violates the provisions of RCW 90.48.080, or other sections of
29 this chapter, chapter 90.64 RCW, or chapter 90.56 RCW or rules or
30 orders adopted or issued pursuant to ~~((either of))~~ those chapters,
31 shall incur, in addition to any other penalty as provided by law, a
32 penalty in an amount of up to ten thousand dollars a day for every such
33 violation. Each and every such violation shall be a separate and
34 distinct offense, and in case of a continuing violation, every day's
35 continuance shall be and be deemed to be a separate and distinct
36 violation. Every act of commission or omission which procures, aids or
37 abets in the violation shall be considered a violation under the

1 provisions of this section and subject to the penalty herein provided
2 for. The penalty amount shall be set in consideration of the previous
3 history of the violator and the severity of the violation's impact on
4 public health and/or the environment in addition to other relevant
5 factors. The penalty herein provided for shall be imposed pursuant to
6 the procedures set forth in RCW 43.21B.300.

7 NEW SECTION. **Sec. 17.** The dairy waste management account is
8 created in the custody of the state treasurer. All receipts from
9 monetary penalties levied pursuant to violations of this chapter must
10 be deposited into the account. Expenditures from the account may be
11 used only for the commission to provide grants to local conservation
12 districts for the sole purpose of assisting dairy producers to develop
13 and fully implement dairy nutrient management plans. Only the chairman
14 of the commission or the chairman's designee may authorize expenditures
15 from the account. The account is subject to allotment procedures under
16 chapter 43.88 RCW, but an appropriation is not required for
17 expenditures.

18 **Sec. 18.** RCW 90.48.465 and 1997 c 398 s 2 are each amended to
19 read as follows:

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

1 supporting the overhead expenses that are directly related to these
2 activities.

3 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
4 Sec. 1362, for all domestic wastewater facility permits issued under
5 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
6 fifteen cents per month per residence or residential equivalent
7 contributing to the municipality's wastewater system. The department
8 shall adopt by rule a schedule of credits for any municipality engaging
9 in a comprehensive monitoring program beyond the requirements imposed
10 by the department, with the credits available for five years from March
11 1, 1989, and with the total amount of all credits not to exceed fifty
12 thousand dollars in the five-year period.

13 (3) The department shall ensure that indirect dischargers do not
14 pay twice for the administrative expense of a permit. Accordingly,
15 administrative expenses for permits issued by a municipality under RCW
16 90.48.165 are not recoverable by the department.

17 (4) In establishing fees, the department shall consider the
18 economic impact of fees on small dischargers and the economic impact of
19 fees on public entities required to obtain permits for storm water
20 runoff and shall provide appropriate adjustments. The fee for a
21 national pollutant discharge elimination system permit issued for
22 discharges related to manure or other dairy nutrient from a dairy farm
23 as defined under chapter 90.64 RCW shall be fifty cents per animal unit
24 covered by the permit.

25 (5) All fees collected under this section shall be deposited in
26 the water quality permit account hereby created in the state treasury.
27 Moneys in the account may be appropriated only for purposes of
28 administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

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

1 NEW SECTION. **Sec. 19.** *The department is required to report to*
2 *the Legislature by December 1 of each year until 2001, on progress made*
3 *in implementing this act. At a minimum, the reports shall include data*
4 *on inspections, the status of dairy nutrient planning, compliance with*
5 *water quality standards, and enforcement actions. The report shall*
6 *also provide recommendations on how implementation of this act could be*
7 *facilitated for dairy producers and generally improved.*

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

10 NEW SECTION. **Sec. 21.** Sections 3, 5 through 9, and 16 of this
11 act are each added to chapter 90.64 RCW.

12 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
13 preservation of the public peace, health, or safety, or support of the
14 state government and its existing public institutions, and takes effect
15 immediately.

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

20 Correct internal references.