

2 SSB 6161 - H AMD
3 By Representative Koster

4 ADOPTED AS AMENDED 3/5/98

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

1 statutory recognition of the coordination of the functions of
2 conservation districts, the conservation commission, and the department
3 of ecology pertaining to development of dairy waste management plans
4 for the protection of water quality.

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

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

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

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

18 (4) "Certification" means:

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

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

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

28 (6) "Conservation commission" or "commission" means the
29 conservation commission under chapter 89.08 RCW.

30 ~~((2))~~ (7) "Conservation districts" or "district" means a
31 subdivision of state government organized under chapter 89.08 RCW.

32 ~~((3))~~ (8) "Concentrated dairy animal feeding operation" means a
33 dairy animal feeding operation subject to regulation under this chapter
34 which the director designates under RCW ~~((90.64.030))~~ 90.64.020 or
35 meets the following criteria:

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

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

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

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

10 (~~(4)~~) (9) "Dairy animal feeding operation" means a lot or
11 facility where the following conditions are met:

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

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

21 (~~(5)~~) (10) "Dairy farm" means any farm that is licensed to
22 produce milk under chapter 15.36 RCW.

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

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

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

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

33 (15) "Department" means the department of ecology under chapter
34 43.21A RCW.

35 (~~(6)~~) (16) "Director" means the director of the department of
36 ecology, or his or her designee.

37 (17) "Upset" means an exceptional incident in which there is an
38 unintentional and temporary noncompliance with technology-based permit
39 effluent limitations because of factors beyond the reasonable control

1 of the dairy. An upset does not include noncompliance to the extent
2 caused by operational error, improperly designed treatment facilities,
3 inadequate treatment facilities, lack of preventive maintenance, or
4 careless or improper operation.

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

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

10 (i) A dairy producer has a current national pollutant discharge
11 elimination system permit with a wastewater system designed, operated,
12 and maintained for the current herd size and that contains all process-
13 generated wastewater plus average annual precipitation minus
14 evaporation plus contaminated storm water runoff from a twenty-five
15 year, twenty-four hour rainfall event for that specific location, and
16 the dairy producer has complied with all permit conditions, including
17 dairy nutrient management plan conditions for appropriate land
18 application practices; or

19 (ii) A dairy producer does not have a national pollutant discharge
20 elimination system permit, but has complied with all of the elements
21 of a dairy nutrient management plan that: Prevents the discharge of
22 pollutants to waters of the state, is commensurate with the dairy
23 producer's current herd size, and is approved and certified under
24 section 6 of this act;

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

26 (c) The lack of an approved dairy nutrient management plan by July
27 1, 2002; or

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

30 NEW SECTION. Sec. 3. (1) Every dairy producer licensed under
31 chapter 15.36 RCW shall register with the department by September 1,
32 1998, and shall reregister with the department by September 1st of
33 every even-numbered year. Every dairy producer licensed after
34 September 1, 1998, shall register with the department within sixty days
35 of licensing. The purpose of registration is to provide and update
36 baseline information for the dairy nutrient management program.

37 (2) To facilitate registration, the department shall obtain from
38 the food safety and animal health division of the department of

1 agriculture a current list of all licensed dairy producers in the state
2 and mail a registration form to each licensed dairy producer no later
3 than July 15, 1998.

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

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

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

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 4.** Before October 1, 1998, the department and
27 conservation commission shall jointly sponsor and hold an educational
28 workshop for conservation districts from around the state. The purpose
29 of the workshop is to inform local conservation districts about the
30 requirements of this chapter, and for local conservation districts, the
31 conservation commission, and the department to clearly understand their
32 respective roles and responsibilities in carrying out these
33 requirements.

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

37 (a) Survey for evidence of violations;

1 (b) Identify corrective actions for actual or imminent discharges
2 that violate or could violate the state's water quality standards;

3 (c) Monitor the development and implementation of dairy nutrient
4 management plans; and

5 (d) Identify dairy producers who would benefit from technical
6 assistance programs.

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

10 (3) Follow-up inspections shall be conducted by the department to
11 ensure that corrective and other actions as identified in the course of
12 initial inspections are being carried out. The department shall also
13 conduct such additional inspections as are necessary to ensure
14 compliance with state and federal water quality requirements, provided
15 that all licensed dairy farms shall be inspected once within two years
16 of the start of this program. The department, in consultation with the
17 advisory and oversight committee established in section 8 of this act,
18 shall develop performance-based criteria to determine the frequency of
19 inspections.

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

23 (a) Existence or implementation of a dairy nutrient management
24 plan;

25 (b) Proximity to impaired waters of the state; and

26 (c) Proximity to all other waters of the state. The criteria
27 developed to implement this subsection (4) shall be reviewed by the
28 advisory and oversight committee.

29 NEW SECTION. **Sec. 6.** (1) Except for those producers who already
30 have a certified dairy nutrient management plan as required under the
31 terms and conditions of an individual or general national pollutant
32 discharge elimination system permit, all dairy producers licensed under
33 chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient
34 management plan. If at any time a dairy nutrient management plan fails
35 to prevent the discharge of pollutants to waters of the state, it shall
36 be required to be updated.

37 (2) By November 1, 1998, the conservation commission, in
38 conjunction with the advisory and oversight committee established under

1 section 8 of this act shall develop a document clearly describing the
2 elements that a dairy nutrient management plan must contain to gain
3 local conservation district approval.

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

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

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

15 (4) In evaluating alternative technologies and methods, the
16 principal objectives of the committee's evaluation shall be
17 determining:

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

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

23 (c) Whether the technologies and methods approved or provided by
24 the natural resources conservation service for use by confined animal
25 feeding operations are necessarily required for other categories of
26 dairy operations.

27 In addition, the committee shall encourage the conservation
28 commission and the conservation districts to apply in dairy nutrient
29 management plans technologies and methods that are appropriate to the
30 needs of the specific type of operation and the specific farm site and
31 to avoid imposing requirements that are not necessary for the specific
32 dairy producer to achieve compliance with water quality requirements.

33 (5) Such plans shall be submitted for approval to the local
34 conservation district where the dairy farm is located, and shall be
35 approved by conservation districts no later than by July 1, 2002. The
36 conservation commission, in conjunction with conservation districts,
37 shall develop a state-wide schedule of plan development and approval to
38 ensure adequate resources are available to have all plans approved by
39 July 1, 2002.

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

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

12 (8) If a plan contains the elements identified in subsection (2) of
13 this section, a conservation district shall approve the plan no later
14 than ninety days after receiving the plan. If the plan does not
15 contain the elements identified in subsection (2) of this section, the
16 local conservation district shall notify the dairy producer in writing
17 of modifications needed in the plan no later than ninety days after
18 receiving the plan. The dairy producer shall provide a revised plan
19 that includes the needed modifications within ninety days of the date
20 of the local conservation district notification. If the dairy producer
21 does not agree with, or otherwise takes exception to, the modifications
22 requested by the local conservation district, the dairy producer may
23 initiate the appeals process described in section 7 of this act within
24 thirty days of receiving the letter of notification.

25 (9) 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. Certification forms shall be signed by December 31, 2003,
32 and a copy provided to the department for recording in the data base
33 established in section 9 of this act.

34 (10) The ability of dairy producers to comply with the planning
35 requirements of this chapter depends, in many cases, on the
36 availability of federal and state funding to support technical
37 assistance provided by local conservation districts. Dairy producers
38 shall not be held responsible for noncompliance with the planning
39 requirements of this chapter if conservation districts are unable to

1 perform their duties under this chapter because of insufficient
2 funding.

3 NEW SECTION. **Sec. 7.** (1) Conservation district decisions
4 pertaining to denial of approval or denial of certification of a dairy
5 nutrient management plan; modification or amendment of a plan;
6 conditions contained in a plan; application of any dairy nutrient
7 management practices, standards, methods, and technologies to a
8 particular dairy farm; and the failure to adhere to plan review and
9 approval timelines identified in section 6 of this act are appealable
10 under this chapter. Department actions pertaining to water quality
11 violations are appealable under chapter 90.48 RCW.

12 In addition, a dairy producer who is constrained from complying
13 with the planning requirements of this chapter because of financial
14 hardship or local permitting delays may request a hearing before the
15 conservation commission and may request an extension of up to one year
16 beyond the approval and certification dates prescribed in this chapter
17 for plan approval and certification.

18 (2) Within thirty days of receiving a local conservation district
19 notification regarding any of the decisions identified in subsection
20 (1) of this section, a dairy producer who disagrees with any of these
21 decisions may request an informal hearing before the conservation
22 commission or may appeal directly to the pollution control hearings
23 board. The commission shall issue a written decision no later than
24 thirty days after the informal hearing.

25 (3) If the conservation commission reverses the decision of the
26 conservation district, the conservation district may appeal this
27 reversal to the pollution control hearings board according to the
28 procedure in chapter 43.21B RCW within thirty days of receipt of the
29 commission's decision.

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

35 NEW SECTION. **Sec. 8.** (1) A dairy nutrient management program
36 advisory and oversight committee is established. The committee shall
37 be cochaired by the executive director of the conservation commission

1 and a dairy industry representative. The purpose of the committee is
2 to provide direction to and oversight of the dairy nutrient management
3 inspection program, as well as to encourage the use of appropriate
4 alternative technologies and methods for managing dairy nutrients.

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

16 (3) The conservation commission shall contact agencies and
17 organizations representing the interests identified in subsection (2)
18 of this section and request that they notify their employees and
19 membership of the opportunity to serve on the advisory and oversight
20 committee. The commission shall also extend the invitations to the
21 natural resources conservation service and the federal environmental
22 protection agency. An association representing the dairy industry
23 shall solicit interest broadly from both within and outside of the
24 association. Persons interested in serving on the advisory and
25 oversight committee shall submit their names to the conservation
26 commission no later than May 1, 1998. By June 1, 1998, the commission
27 shall appoint the required number of members from the nominations
28 received.

29 (4) Advisory and oversight committee members shall be compensated
30 under RCW 43.03.230 and shall be reimbursed for expenses as provided
31 under RCW 43.03.050 and 43.03.060.

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

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

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

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

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

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

7 (f) Assist the department and the conservation commission in
8 developing reports to the legislature as required in section 17 of this
9 act; and

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

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

18 (2) The data base shall track registrations; inspection dates and
19 results, including findings of violations; regulatory and enforcement
20 actions; and the status of dairy nutrient management plans. In
21 addition, the number of dairy farm inspections by inspector shall be
22 tallied by month. A summary of data base information shall be provided
23 quarterly to the advisory and oversight committee.

24 (3) Any information entered into the data base by the department
25 about any aspect of a particular dairy operation may be reviewed by the
26 affected dairy producer upon request. The department shall correct any
27 information in the data base upon a showing that the information is
28 faulty or inaccurate. Complaints that have been filed with the
29 department and determined to be unfounded, invalid, or without merit
30 shall not be recorded in the data base. Appeals of decisions related
31 to dairy nutrient management plans to the pollution control hearings
32 board or to any court shall be recorded, as well as the decisions of
33 those bodies.

34 NEW SECTION. **Sec. 10.** (1) The conservation commission shall
35 establish four dairy nutrient management technical assistance teams by
36 June 1, 1998. The teams shall be geographically located throughout the
37 state. Each team shall consist of one or more professional engineers,

1 local conservation district employees, and dairy nutrient management
2 experts from Washington State University. The purpose of the teams is
3 to:

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

6 (b) Assist dairy farms in developing dairy nutrient management
7 plans.

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

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

16 ~~((Upon receiving a complaint or upon its own determination that a~~
17 ~~dairy animal feeding operation is a likely source of water quality~~
18 ~~degradation,)) (1) Under the inspection program established in section
19 5 of this act, the department may investigate a dairy ((animal feeding
20 operation)) farm to determine whether the operation is discharging
21 ((directly)) pollutants or ((recently)) has ((discharged directly)) a
22 record of discharging pollutants into surface or ground waters of the
23 state. Upon concluding an investigation, the department shall make a
24 written report of its findings, including the results of any water
25 quality measurements, photographs, or other pertinent information, and
26 provide a copy of the report to the dairy producer within twenty days
27 of the investigation.~~

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

36 ~~((Those dairy animal feeding operations that are))~~ (3) A dairy farm
37 that is determined to be a significant contributor of pollution based
38 on actual water quality tests, photographs, or other pertinent

1 information ((if immediate corrective actions are not possible, shall
2 be designated as a concentrated dairy animal feeding operation and
3 shall be)) is subject to the provisions of this chapter and to the
4 enforcement provisions of chapters 43.05 and 90.48 RCW, including civil
5 penalties levied under RCW 90.48.144.

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

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

19 (6) A discharge, including a storm water discharge, to surface
20 waters of the state shall not be considered a violation of this
21 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
22 therefore not be enforceable by the department of ecology or a third
23 party, if at the time of the discharge, a violation is not occurring
24 under RCW 90.64.010(18). In addition, a dairy producer shall not be
25 held liable for violations of this chapter, chapter 90.48 RCW, chapter
26 173-201A WAC, or the federal clean water act due to the discharge of
27 dairy nutrients to waters of the state resulting from spreading these
28 materials on lands other than where the nutrients were generated, when
29 the nutrients are spread by persons other than the dairy producer or
30 the dairy producer's agent.

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

35 (8) This section specifically acknowledges that if a holder of a
36 general or individual national pollutant discharge elimination system
37 permit complies with the permit and the dairy nutrient management plan
38 conditions for appropriate land application practices, the permit
39 provides compliance with the federal clean water act and acts as a

1 shield against citizen or agency enforcement for any additions of
2 pollutants to waters of the state or of the United States as authorized
3 by the permit.

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

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

19 (1) The department has the following duties:

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

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

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

26 ~~((e))~~ (d) Determine if a dairy-related water quality problem
27 requires immediate corrective action under the Washington state water
28 pollution control laws, chapter 90.48 RCW, or the Washington state
29 water quality standards adopted under chapter 90.48 RCW~~((, or other~~
30 ~~authorities))~~. The department shall maintain the lead enforcement
31 responsibility;

32 ~~((d))~~ (e) Administer and enforce national pollutant~~((s))~~
33 discharge elimination system permits for operators of concentrated
34 dairy animal feeding operations, where required by federal
35 regulations~~((,))~~ and ~~((administer))~~ state laws or upon request of a
36 dairy producer;

37 ~~((e))~~ Appoint representatives, including dairy industry
38 representatives, to participate in the compliance review committee that

1 ~~will annually review and update policy and disseminate information as~~
2 ~~needed;))~~

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

4 (g) Encourage communication and cooperation between local
5 department personnel and the appropriate conservation district
6 personnel;

7 (~~(g) Encourage~~) (h) Require the use of (~~(federal soil~~
8 ~~conservation service standards and specifications in designing best~~
9 ~~management practices for~~) dairy (~~(waste)~~) nutrient management plans
10 (~~(to protect water quality)~~) as required under this chapter for
11 entities required to plan under this chapter; and

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

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

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

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

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

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

30 (c) Encourage communication and cooperation between the
31 conservation district personnel and local department personnel;

32 (d) (~~(Adopt and carry out a compliance option from level 1, level~~
33 ~~2, level 3, or level 4)~~) Provide technical assistance to dairy
34 producers in developing and implementing a dairy nutrient management
35 plan; and

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

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

5 **Sec. 14.** RCW 90.64.080 and 1993 c 221 s 9 are each amended to read
6 as follows:

7 (1) The conservation commission has the 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~~) nutrient management program implementation;

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

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

21 (d) Provide an informal hearing for disputes between dairy
22 producers and local conservation districts pertaining to: (i) Denial
23 of approval or denial of certification of dairy nutrient management
24 plans; (ii) modification or amendment of plans; (iii) conditions
25 contained in plans; (iv) application of any dairy nutrient management
26 practices, standards, methods, and technologies to a particular dairy
27 farm; and (v) the failure to adhere to the plan review and approval
28 timelines identified in section 6 of this act. An informal hearing may
29 also provide an opportunity for dairy producers who are constrained
30 from timely compliance with the planning requirements of this chapter
31 because of financial hardship or local permitting delays to petition
32 for additional time to comply.

33 (e) Encourage communication between the conservation district
34 personnel and local department personnel;

35 (f) Accept nominations and appoint (~~conservation district~~
36 representatives)) members to serve on the (~~compliance review~~)
37 advisory and oversight committee with advice of the Washington
38 association of conservation districts and the department;

1 (g) (~~Appoint a commission representative to participate on the~~
2 ~~compliance review committee that will annually review and update policy~~
3 ~~and disseminate information as needed~~) Provide a cochair to the
4 advisory and oversight committee;

5 (h) Report to the legislature by December 1st of each year until
6 2003 on the status of dairy nutrient management planning and on the
7 technical assistance provided to dairy producers in carrying out the
8 requirements of this chapter; and

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

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

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

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

28 (1) The department shall establish annual fees to collect expenses
29 for issuing and administering each class of permits under RCW
30 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be
31 established by rule within one year of March 1, 1989, and thereafter
32 the fee schedule shall be adjusted no more often than once every two
33 years. This fee schedule shall apply to all permits, regardless of
34 date of issuance, and fees shall be assessed prospectively. All fees
35 charged shall be based on factors relating to the complexity of permit
36 issuance and compliance and may be based on pollutant loading and
37 toxicity and be designed to encourage recycling and the reduction of

1 the quantity of pollutants. Fees shall be established in amounts to
2 fully recover and not to exceed expenses incurred by the department in
3 processing permit applications and modifications, monitoring and
4 evaluating compliance with permits, conducting inspections, securing
5 laboratory analysis of samples taken during inspections, reviewing
6 plans and documents directly related to operations of permittees,
7 overseeing performance of delegated pretreatment programs, and
8 supporting the overhead expenses that are directly related to these
9 activities.

10 (2) The annual fee paid by a municipality, as defined in 33 U.S.C.
11 Sec. 1362, for all domestic wastewater facility permits issued under
12 RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of
13 fifteen cents per month per residence or residential equivalent
14 contributing to the municipality's wastewater system. The department
15 shall adopt by rule a schedule of credits for any municipality engaging
16 in a comprehensive monitoring program beyond the requirements imposed
17 by the department, with the credits available for five years from March
18 1, 1989, and with the total amount of all credits not to exceed fifty
19 thousand dollars in the five-year period.

20 (3) The department shall ensure that indirect dischargers do not
21 pay twice for the administrative expense of a permit. Accordingly,
22 administrative expenses for permits issued by a municipality under RCW
23 90.48.165 are not recoverable by the department.

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

28 (5) The fee for an individual permit issued for a dairy farm as
29 defined under chapter 90.64 RCW shall be fifty cents per animal unit up
30 to one thousand one hundred sixty-seven dollars for fiscal year 1998
31 and one thousand two hundred fourteen dollars for fiscal year 1999.
32 The fee for a general permit issued for a dairy farm as defined under
33 chapter 90.64 RCW shall be fifty cents per animal unit up to eight
34 hundred seventeen dollars for fiscal year 1998 and eight hundred fifty
35 dollars for fiscal year 1999. Thereafter, these fees may rise in
36 accordance with the fiscal growth factor as provided in chapter 43.135
37 RCW.

38 (6) All fees collected under this section shall be deposited in the
39 water quality permit account hereby created in the state treasury.

1 Moneys in the account may be appropriated only for purposes of
2 administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

3 ~~((6))~~ (7) Beginning with the biennium ending June 30, 1997, the
4 department shall present a biennial progress report on the use of
5 moneys from the account to the legislature. The report will be due
6 December 31st of odd-numbered years. The report shall consist of
7 information on fees collected, actual expenses incurred, and
8 anticipated expenses for the current and following fiscal years.

9 NEW SECTION. **Sec. 17.** The department, in conjunction with the
10 conservation commission and advisory and oversight committee, shall
11 report to the legislature by December 1st of each year until 2003, on
12 progress made in implementing chapter . . . , Laws of 1998 (this act).
13 At a minimum, the reports shall include data on inspections, the status
14 of dairy nutrient planning, compliance with water quality standards,
15 and enforcement actions. The report shall also provide recommendations
16 on how implementation of chapter . . . , Laws of 1998 (this act) could
17 be facilitated for dairy producers and generally improved.

18 The conservation commission shall include in the report to the
19 legislature filed December 1, 1999, an evaluation of whether the fiscal
20 resources available to the commission, to conservation districts, and
21 to Washington State University dairy nutrient management experts are
22 adequate to fund the technical assistance teams established under
23 section 10 of this act and to develop and certify plans as required by
24 the schedule established in section 6 of this act. If the funding is
25 insufficient, the report shall include an estimate of the amount of
26 funding necessary to accomplish the schedule contained in section 6 of
27 this act.

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

30 (1) The hearings board shall only have jurisdiction to hear and
31 decide appeals from the following decisions of the department, the
32 director, local conservation districts, the administrator of the office
33 of marine safety, and the air pollution control boards or authorities
34 as established pursuant to chapter 70.94 RCW, or local health
35 departments:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
2 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
3 90.56.330.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
5 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
6 90.14.130, (~~and~~) 90.48.120, and 90.56.330.

7 (c) The issuance, modification, or termination of any permit,
8 certificate, or license by the department or any air authority in the
9 exercise of its jurisdiction, including the issuance or termination of
10 a waste disposal permit, the denial of an application for a waste
11 disposal permit, or the modification of the conditions or the terms of
12 a waste disposal permit.

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

15 (e) Decisions of local health departments regarding the issuance
16 and enforcement of permits to use or dispose of biosolids under RCW
17 70.95J.080.

18 (f) Decisions of local conservation districts related to the denial
19 of approval or denial of certification of a dairy nutrient management
20 plan; conditions contained in a plan; application of any dairy nutrient
21 management practices, standards, methods, and technologies to a
22 particular dairy farm; and failure to adhere to the plan review and
23 approval timelines in section 6 of this act.

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

27 (2) The following hearings shall not be conducted by the hearings
28 board:

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

31 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
32 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

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

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

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

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

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

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

7 NEW SECTION. **Sec. 22.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately.

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

15 **SSB 6161** - H AMD
16 By Representative Koster

17 ADOPTED AS AMENDED 3/5/98

18 On page 1, line 1 of the title, after "management;" strike the
19 remainder of the title and insert "amending RCW 90.64.005, 90.64.010,
20 90.64.030, 90.64.050, 90.64.070, 90.64.080, 90.48.465, and 43.21B.110;
21 adding new sections to chapter 90.64 RCW; creating new sections;
22 repealing RCW 90.64.060 and 90.64.090; prescribing penalties; and
23 declaring an emergency."

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