
HOUSE BILL 2162

State of Washington

55th Legislature

1997 Regular Session

By Representative Koster

Read first time 02/25/97. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to dairy waste; amending RCW 90.64.005, 90.64.010,
2 90.64.030, 90.64.050, 90.64.060, 90.64.070, and 90.64.080; adding new
3 sections to chapter 90.64 RCW; and repealing RCW 90.64.090.

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

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

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

1 of time and that the intent of this chapter is to take the consensus
2 that has been developed and place it into statutory form.

3 It is also the intent of this chapter to recognize the existing
4 working relationships between conservation districts, the conservation
5 commission, and the department of ecology in protecting water quality
6 of the state. A further purpose of this chapter is to provide
7 statutory recognition of the coordination of the functions of
8 conservation districts, the conservation commission, and the department
9 of ecology pertaining to development of dairy waste management plans
10 for the protection of water quality.

11 It is also the intent of this chapter to establish a credible
12 inspection and technical assistance program for dairy farms to address
13 the discharge of pollutants to surface and ground waters of the state
14 that will lead to water quality compliance by the industry. A further
15 purpose is to create a balanced program involving technical assistance,
16 regulation, and enforcement with coordination and oversight of the
17 program by a committee composed of industry, agency, and other
18 representatives. Additionally, the legislature intends to simplify
19 current complex coordination procedures between the department, the
20 conservation commission, and conservation districts.

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

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

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

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

29 (3) "Concentrated dairy animal feeding operation" means a dairy
30 animal feeding operation subject to regulation under this chapter which
31 the director designates under RCW 90.64.030 or meets the following
32 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) "Dairy animal feeding operation" means a lot or facility where
9 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) "Dairy farm" means any farm that is a concentrated dairy animal
20 feeding operation or a dairy animal feeding operation.

21 (6) "Dairy waste inspection team" means one or more representatives
22 of the department and a local conservation district.

23 (7) "Department" means the department of ecology under chapter
24 43.21A RCW.

25 ((+6+)) (8) "Director" means the director of the department of
26 ecology, or his or her designee.

27 (9) "Major violation" means a noncompliance with one or more
28 elements of a farm plan that causes a discharge of one or more
29 pollutants into waters of the state or creates an imminent threat of a
30 discharge.

31 (10) "Minor violation" means a failure to comply with any provision
32 of this chapter that does not constitute a major violation.

33 NEW SECTION. Sec. 3. (1) The dairy waste inspection team shall
34 conduct a regular inspection program of all dairy farms to determine
35 their status implementing dairy animal waste management plans and
36 compliance with wastewater discharge permit, other water pollution
37 control requirements under the federal clean water act and chapter
38 90.48 RCW, the state water pollution control act, and this chapter.

1 (2) The dairy farm inspection program conducted by the dairy waste
2 inspection team shall include the following components:

3 (a) Regular and systematic inspections of all dairy farms as
4 provided in subsection (3) of this section and section 11(3)(h) of this
5 act;

6 (b) Conducting dairy farm inspections in response to water
7 pollution complaints received by the department; and

8 (c) Conducting inspections of dairy farms located in watersheds
9 containing impaired waterbody segments formally listed and approved by
10 the federal environmental protection agency under section 303(d) of the
11 federal water pollution control act as amended, Title 33 U.S.C. Sec.
12 1251 et seq.

13 (3) A dairy farm shall be inspected a minimum of once every two
14 years. Dairy farms that are determined to be an actual or likely
15 source of water quality degradation shall receive more frequent
16 inspections.

17 (4) A dairy farm inspected by the dairy waste inspection team that
18 is fully implementing a dairy animal waste management plan meeting
19 federal natural resources conservation service technical standards and
20 specifications and is not directly discharging pollutants to waters of
21 the state shall not be scheduled for another inspection for twenty-four
22 months unless a complaint is received by the dairy waste inspection
23 team.

24 **Sec. 4.** RCW 90.64.030 and 1993 c 221 s 4 are each amended to read
25 as follows:

26 (~~Upon receiving a complaint or upon its own determination that a~~
27 ~~dairy animal feeding operation is a likely source of water quality~~
28 ~~degradation,~~) The ((department)) dairy waste inspection team may
29 investigate a dairy animal feeding operation to determine whether the
30 operation is discharging directly pollutants or recently has discharged
31 directly pollutants into surface or ground waters of the state under
32 the inspection program in section 3 of this act. The ((department))
33 dairy waste inspection team shall investigate a written complaint filed
34 with the department within ten days and shall make a written report of
35 its findings including the results of any water quality measurements,
36 photographs, or other pertinent information. A copy of the findings
37 shall be provided upon request to the dairy animal feeding operation.

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

7 NEW SECTION. **Sec. 5.** (1) Upon determining that any dairy animal
8 feeding operation is a concentrated dairy animal feeding operation
9 requiring permit coverage, the department shall notify the operator,
10 and landowner if different, that technical assistance is available from
11 a local conservation district.

12 (2) Timelines to achieve compliance shall be administered by the
13 department through waste discharge permits under RCW 90.64.020 and
14 authorities under chapter 90.48 RCW. Farms shall be provided six
15 months to develop a dairy animal waste management plan and an
16 additional eighteen months to fully implement the plan.

17 **Sec. 6.** 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 3 of this act;

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

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

31 (d) Administer and enforce national pollutants discharge
32 elimination system permits for operators of concentrated dairy animal
33 feeding operations, where required by federal regulations, and
34 ((administer)) state laws;

35 (e) ((Appoint representatives, including dairy industry
36 representatives, to participate in the compliance review committee that
37 will annually review and update policy and disseminate information as

1 needed)) Participate on the dairy waste program coordination and
2 oversight committee;

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

6 (g) ((Encourage)) Require the use of federal ((soil)) natural
7 resource conservation service standards and specifications in designing
8 best management practices for dairy animal waste management plans to
9 protect water quality;

10 (h) Provide to the commission and dairy waste program coordination
11 and oversight committee an annual report of dairy waste ((pollution))
12 inspection, permitting, and enforcement activities.

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

15 **Sec. 7.** RCW 90.64.060 and 1993 c 221 s 7 are each amended to read
16 as follows:

17 (1) If the ((department)) dairy waste inspection team determines
18 that the operator of a dairy animal feeding operation has the means to
19 correct a water quality problem in a manner that will prevent future
20 contamination and does so promptly and such correction is maintained,
21 the department shall cease pursuit of the complaint.

22 (2) If the ((department)) dairy waste inspection team determines
23 that an unresolved water quality problem from a dairy animal feeding
24 operation requires immediate corrective action, the department shall
25 notify the operator and the district in which the problem is located.

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

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

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

34 ~~(ii) Districts operating at levels 3 and 4 will receive a copy of~~
35 ~~complaint information and the letter sent by the department to the~~
36 ~~operator informing the operator of the complaint and providing the~~
37 ~~operator with the opportunity to work with the conservation district on~~
38 ~~a voluntary basis.~~

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

4 **Sec. 8.** RCW 90.64.070 and 1993 c 221 s 8 are each amended to read
5 as follows:

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

7 (a) ~~((Adopt and annually update the water quality section in the~~
8 ~~conservation district dairy waste management plan))~~ Provide technical
9 assistance to the department in identifying existing or potential water
10 quality problems resulting from dairy farms through implementation of
11 the inspection program in section 3 of this act;

12 (b) ~~((As part of the district annual report, include a water~~
13 ~~quality progress report on dairy waste management activities conducted~~
14 ~~that are related to this chapter))~~ Forward complaints regarding
15 discharge of pollutants to the department;

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

18 (d) ~~((Adopt and carry out a compliance option from level 1, level~~
19 ~~2, level 3, or level 4))~~ Provide technical assistance in developing and
20 implementing a dairy waste management farm plan.

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

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

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

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

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

33 (c) Provide coordination for conservation district programs at the
34 state level through special arrangements with appropriate federal and
35 state agencies;

36 (d) Inform conservation districts of activities and experiences of
37 other conservation districts relative to agricultural water quality

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

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

5 (f) Appoint conservation district representatives to serve on the
6 ~~((compliance review))~~ dairy waste program coordination and oversight
7 committee with advice of the Washington association of conservation
8 districts;

9 ~~((Appoint a commission representative to participate on the~~
10 ~~compliance review committee that will annually review and update policy~~
11 ~~and disseminate information as needed))~~ Serve as chair to the dairy
12 waste program coordination and oversight committee;

13 (h) 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 management program.

19 NEW SECTION. Sec. 10. By September 30, 1997, the department in
20 consultation with the dairy waste program coordination and oversight
21 committee shall develop and maintain a data base to account for the
22 implementation of the inspection program identified in section 3 of
23 this act. The data base shall track inspection, regulatory and
24 enforcement actions, and industry implementation of dairy animal waste
25 management plans. A summary of the data base information shall be
26 provided each year to the dairy waste program coordination and
27 oversight committee members.

28 NEW SECTION. Sec. 11. (1) A dairy waste program coordination and
29 oversight committee is established. The committee shall be chaired by
30 the conservation commission. The purpose of the committee is to
31 provide accountable direction and oversight of the dairy waste
32 inspection program.

33 (2) The committee shall be composed of representatives of the
34 department, the dairy federation, the conservation commission,
35 conservation districts, the federal natural resources conservation
36 service, the federal environmental protection agency, environmental
37 groups, the shellfish industry, and the department of health.

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

2 (a) Meet at least three times per calendar year;

3 (b) Disseminate information as needed;

4 (c) Maintain meeting minutes and account for the resolution of
5 issues jointly identified by the committee chairs as needing to be
6 addressed;

7 (d) Review the annual data base report provided by the department
8 under section 10 of this act;

9 (e) Act as a forum to hear suggestions from any interested parties,
10 including dairy farmers, regarding implementation of the dairy waste
11 program;

12 (f) Monitor the development and use of the dairy animal waste
13 planning guidelines adopted by the conservation commission under
14 section 13 of this act;

15 (g) Create and recommend standardized dairy farm waste facility
16 inspection procedures and a reporting format to be used by the
17 department; and

18 (h) Develop performance-based criteria to determine the frequency
19 of inspections initiated under section 3 of this act.

20 (4) The dairy waste program coordination and oversight committee
21 does not replace or infringe upon the authority, duties, or
22 responsibilities of the pollution control hearings board.

23 NEW SECTION. **Sec. 12.** (1) The conservation commission shall
24 establish four dairy waste technical assistance teams by January 1,
25 1998. The teams shall be geographically located throughout the state
26 to maximize regional availability to dairy farmers.

27 (2) Each team shall be capable of providing the full range of
28 engineering design and nutrient management technical assistance
29 necessary to assist dairy farmers in developing and implementing dairy
30 animal waste management plans containing natural resources conservation
31 service technical standards and specifications.

32 (3) The teams shall be funded through June 30, 2001, with funds
33 from the clean water account provided to the conservation commission to
34 address nonpoint sources of water pollution.

35 NEW SECTION. **Sec. 13.** (1) By January 1, 1998, the conservation
36 commission shall develop, adopt, and distribute to the dairy waste

1 teams and conservation districts guidelines for the development of
2 dairy animal waste management plans.

3 (2) The commission shall form an advisory committee to assist
4 developing these guidelines. The advisory committee may be composed of
5 representatives from the federal environmental protection agency,
6 federal natural resources conservation service, the department of
7 ecology, Washington State University cooperative extension local
8 conservation districts, and the Washington dairy federation.

9 (3) The guidelines shall be clearly written and shall be based on
10 scientifically and economically sound best management practices.

11 (4) Beginning January 1, 1998, the dairy waste technical assistance
12 teams established under section 12 of this act and conservation
13 districts shall follow these guidelines when preparing dairy animal
14 waste management plans for dairy farms.

15 NEW SECTION. **Sec. 14.** Dairy waste teams and conservation
16 districts shall provide a complete copy of any dairy animal waste
17 management plan prepared after the effective date of this chapter to
18 the department within fourteen days of completion.

19 NEW SECTION. **Sec. 15.** The department shall provide copies of all
20 final dairy farm inspection reports and documentation of all formal
21 regulatory and enforcement actions taken by the department to the local
22 conservation district within fourteen days.

23 NEW SECTION. **Sec. 16.** (1) The following penalty schedule is
24 established for major violations of this chapter:

25 (a) The first major violation shall result in a monetary penalty of
26 five cents per pound of milk produced on the dairy farm in twenty-four
27 hours. The monetary penalty may be returned to the dairy producer if
28 the violation is corrected within two weeks of department notification;

29 (b) The second major violation shall result in a monetary penalty
30 of ten cents per pound of milk produced in forty-eight hours. The
31 monetary penalty shall be deposited into the dairy waste management
32 account created in section 17 of this act; and

33 (c) The third, and any subsequent, major violation shall result in
34 loss of a grade A license for a period of three months or until full
35 compliance is achieved, whichever is greater.

1 (2) A dairy farm that has not had a violation in twenty-four months
2 is considered to not have incurred a major violation under this
3 chapter.

4 (3) Three minor violations during any twelve-month period
5 constitute one major violation.

6 (4) The department, after consulting with other members of the
7 dairy waste inspection team, may enforce any appropriate provision of
8 a dairy animal waste management plan.

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

20 NEW SECTION. **Sec. 18.** RCW 90.64.090 and 1993 c 221 s 10 are each
21 repealed.

22 NEW SECTION. **Sec. 19.** Sections 3, 5, and 10 through 17 of this
23 act are each added to chapter 90.64 RCW.

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